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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 547

ERNEST TRIPLETT, PETITIONER,

vs.

STATE OF IOWA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF IOWA

PETITION FOR CERTIORARI FILED APRIL 17, 1957
CERTIORARI GRANTED OCTOBER 14, 1957

SUPREME COURT OF THE UNITED STATES

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[fol. 1-2] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

Criminal

21 · 48864

STATE OF IOWA, Plaintiff-Appellee,

vs.

ERNEST TRIPLETT, Defendant-Appellant.

Appeal From the District Court of Plymouth County
Honorable R. G. Rodman, Judge.

Dayton Countryman, Attorney General of Iowa, Raphael R. R. Dvorak, Assistant Attorney General, William S. Sturges, County Attorney, Plymouth County, Iowa, Robert E. Beebe, Special Prosecutor, Sioux City, Iowa, Attorneys for the Appellee.

Thomas O. ~~Tracy~~ Tacy, Council Bluffs, Iowa, Attorney for Appellant.

Abstract of Record—Filed March 5, 1956

[fol. 3] INDICTMENT—April 12, 1955

On the 12th day of April, 1955, the Grand Jury of Plymouth County, Iowa, returned into court an indictment, accusing Ernest Triplett of the crime of murder and alleging that the said Ernest Triplett did, on or about the 31st day of August, 1954, in Plymouth County, Iowa, murder Jimmy Bremmers.

PLEA—Not Guilty

To this indictment and the charge contained therein, the said defendant, Ernest Triplett, entered his plea of Not Guilty, and on the 6th day of June, 1955, a trial was had to a jury on the issues raised by said Indictment and plea.

Such portions of the testimony as the defendant considers pertinent to this appeal, are set forth in this Abstract of Record, as follows:

State's Testimony

Dr. Thomas L. Coriden, called by the State, was sworn and testified:

Direct examination.

My name is Dr. Thomas L. Coriden. I am and was [fol. 4] during September of 1954, coroner of Woodbury County, Iowa. In connection with my duties, I was called to the location where a body was found in Plymouth County, Iowa north of Sioux City. State's Exhibit F portrays the scene surrounding the body and the distance of the body from the fence, and the relative location of the different portions of the body. State's Exhibit J portrays the relative location of the body and the road and fence. I supervised the general picking up of the portions of the body. There were two holes or fractures in the head, in the left parietal region. The lower one was approximately 3 by 2 inches and connecting was another defect or hole about 1 inch by 1½ inches. The edges of these defects or holes were clean cut, they were not ragged or jagged. The pieces of bone were down inside the skull. I found no other fractures or defects except where the bones had been knawed by animals. Some of the bones were missing. It would have taken two severe, direct blows to have produced this type of fracture. The zipper of the trowsers was down about one inch and the belt buckle undone. In my opinion the cause of death was the injuries described and death would be rapid, if not instantaneous. Approximately 15 feet from the body, toward the fence was an area of dried blood, about 6 inches by one foot. It would not be possible for Jimmy Bremmers to have suffered these injuries through a fall. It would have taken a blow with a hard object, and they would have to be applied with [fol. 5] force, direct blows.

Cross-examination.

These blows could have been caused by a hammer. The holes were round to rectangular and in each case there were no ragged edges and the piece of bone was driven into the interior of the skull.

Q. And, you say it couldn't have been done by a human hand?

A. No.

Redirect examination.

The wounds in the head could not have been done with the bare fist. Yes, they could have been caused by a rock held in the hand.

DOROTHY BREMMERS, called for the State, was sworn, and testified:

Direct examination.

My name is Dorothy Bremmers. My husband's name is Joseph Bremmers. I am the mother of Jimmy Bremmers. The night Jimmy disappeared, he was wearing white undershirt, blue jeans and shoes and socks, and a gray gaberdine belt. I examined the clothing found on his body and I am positive they were the clothing Jimmy [fol. 6] was wearing when he disappeared.

Cross-examination.

No cross-examination.

FRANK BELLMER, called for the State, was sworn and testified:

Direct examination.

My name is Frank Bellmer. On the date of August 31, 1954, I was attached to the Bureau of Identification of the Sioux City Police Department. At about 10:45 a.m., I took photographs of the body which was found on Highway 29 north of Sioux City in Plymouth County. (The witness identified Exhibits D, H and I, which were admitted without objection.

OFFERS IN EVIDENCE AND OBJECTION THERETO

(Photographs of the body of Jimmie Bremmers, having been marked for purpose of identification, Exhibits F, C

and J were identified by the witness and offered in evidence.)

Without the presence of the jury, the following objection to E, C and J was made by the defense:

The defense respectfully shows to the court:

[fol. 7] (1) That the exhibits now proposed to be introduced are photographs of the decomposed body of Jimmie Bremmers; that the same are incompetent, irrelevant and immaterial for the reason that they cannot possibly assist the jury in any manner in their deliberations on the evidence in this case.

(2) That the exhibits could be used for no other purpose except to identify the body as that of Jimmie Bremmers; that sufficient identification of the body as that of Jimmie Bremmers has heretofore been made; that the exhibits offered are merely cumulative and could not possibly guide the jury in identifying the body as that of Jimmie Bremmers, or any other person.

(3) That the witnesses, Joseph Bremmers and his wife, the father and mother, respectively, of Jimmie Bremmers, were unable to identify the body as being that of Jimmie Bremmers, except by the clothing on the body, on account of its decomposed condition.

(4) That to admit the exhibits in evidence of the decomposed body of Jimmie Bremmers after it had lain in the August sun possibly been attacked by wolves, foxes or birds, could serve no purpose except to inflame the mind of the jury and stir up their passion and prejudice against the defendant and prevent him from having a fair trial and become part of a motion for a new trial on the part of the defendant if admitted.

(5) That since said exhibits are merely cumulative and [fol 8] since the matter of identification has been fully proved by the State and is not contested by the defendant, the said exhibits should be excluded for the reason that they will prevent the defendant from having a fair trial by stirring up the passion and prejudice of the jury against him.

Mr. Beebe: Comes now the State and for resistance to the defendant's statements with reference to the exhibits now under discussion states: That said photographs are

important from the State's standpoint in that they accurately depict the relative location of the body, the fence and the road; that they have substantive weight in developing the State's theory of the modus operandi of the alleged murder; that the fixing of the location of the body becomes material to the State in tying in certain other circumstantial evidence which will be subsequently introduced, and that for said reasons that said photographs do have substantial material and new value in the development of the State's case against the defendant.

Mr. Tracy: The position of the body has heretofore been identified and not challenged by the defense, and, furth there is no showing that the body wasn't moved after the crime was committed by someone; the relative position of the body to the fence is not depicted by these photographs of the mutilated body of Jimmie Bremmers; that it can have no relevancy or materiality in this case and [fol. 9] that the sole purpose of its introduction is to inflame the mind of the jury, prejudice them against the defendant and prevent him from having a fair trial. The defense asks that the exhibits be excluded for that reason.

OBJECTION OVERRULED

The Court: The objection is overruled as to Exhibits F, C and J and Exhibits F, C and J are admitted.

WILLIAM A. DENNISON, called for the State, was sworn and testified:

Direct examination.

My name is William A. Dennison. I have been on the Sioux Police Department for 20 years. In my capacity as lieutenant of detectives, the Jimmie Bremmers case was assigned to me. I had a number of conversations with Mr. Triplett.

Q. In those conversations, did Mr. Triplett make certain admissions or confessions to you?

A. He did.

Mr. Tacy: If the Court please, if testimony of this character is to be elicited from this witness, the defense would like to take up a matter of law with the Court, and would ask that the jury be excused.

[fol. 10] Thursday, June 9, 1955 at 9:00 a.m., all parties being present, as heretofore, the following proceedings were had in chambers, in the absence of the jury:

The Court: I guess we are ready. Now, on this 9th day of June, 1955, this matter comes on as a preliminary hearing, in open court in the absence of the jury, for the determination of the admissibility of certain evidence to be offered by the State in this case. The proceedings are all in the presence of the defendant.

Cross-examination.

By Mr. Tacy:

On September 2, 1954, Mr. Triplett was taken into custody. On that date members of the force received a call from a person by the name of Meisch that a man driving a car for the Flood Music Company, as a salesman had been seen in the vicinity of the Bremmers home. It was that lead that prompted us to question Mr. Triplett. I did not personally call the Flood Music Store, but when Mr. Triplett was taken into custody, he was waiting for the police at the Flood Music Store.

Q. You had no warrant for his arrest when you took him into custody, did you?

A. No.

Q. On what later date did you file an information [fol. 11] against Mr. Triplett before a magistrate?

A. I did not sign any information or take him before a magistrate until the murder charge was filed.

Q. That was after the tape recording was made in Cherokee, was it not?

A. It was.

Q. At the time the tape recording was made in Cherokee at the Mental Health Institute, Mr. Triplett was not charged with any crime, was he?

A. No.

Q. Do you know a doctor down there by a name I can't pronounce—his last name is spelled A-z-o-r-d-e-g-a-n—is

he the doctor who prepared this confession, in his handwriting while you were down there?

A. I have no knowledge of that.

Dr. Azordegan was there. I do not know whether this tape recording shows that Mr. Triplett was advised of his constitutional rights not to make a statement or confession. There was a shelf under the table where there was a place to set the tape recording machine. I couldn't say as to whether Mr. Triplett was told that his voice was being recorded. He was asked to repeat the story he had told previous to that. He was not represented by counsel.

Q. Do you know what statements Dr. Azordegan made to [fol. 12] Mr. Triplett before you came down there, concerning this confession?

A. I do not.

Redirect examination.

By Mr. Beebe:

Between September 2nd and September 16th Mr. Triplett signed Exhibits K, K-1 and L concerning his being represented by counsel. No threats or promises were made to get him to write those exhibits.

(Exhibits K, K-1 and L identified by the witness.)

During the time Mr. Triplett was in custody, we were running down leads that he gave us. He slept regularly and was not interviewed for any sustained period of time. I would say Mr. Triplett was of normal mentality and not easily led.

Offers in Evidence

(Exhibits K, K-1 and L were offered in evidence over the objection that they were immaterial to the inquiry and not voluntarily made.)

Recross-examination.

Q. You say Mr. Triplett was not easily led. He was [fol. 13] always cooperative in doing anything he could that you wanted him to do, wasn't he?

A. Up to a certain point, yes.

He said, "I want to go along with you boys, I want to cooperate with you." He was willing to stay there because he was being treated fine. He steadfastly denied any guilt or knowledge of the killing of the Bremmers boy until the tape recorded confession was made at the Mental Health Institute on October 6, 1954.

Mr. Beebe: The State, in addition to Lieutenant Dennison, intends to produce evidence by Chief of Detectives, Harry Gibbons, that he was present with Lieutenant Dennison at the time the tape recording was made in the Cherokee State Mental Hospital, and the testimony of Harry Gibbons would be substantially the same testimony as that of Lieutenant Dennison. The State also intends to introduce evidence by Bill Sanguin that he was an attendant at the Cherokee State Hospital and that he operated the machine which recorded the tape recording taken of Mr. Triplett's statements, and that his testimony would substantiate that of Lieutenant Dennison and Chief Gibbons. The State also offers to introduce evidence of Assistant Chief White that he interviewed Mr. Triplett on several occasions, at which time Mr. Triplett admitted that he had seen the Bemmers boy at a time shortly before 8 o'clock [fol. 14] on the night of August 31, 1954, and that he had conversations with the boy in the vicinity of the boy's home. The State also intends evidence of Captain Davidchik that he talked to Mr. Triplett a day or two after Mr. Triplett's arrest and at that time Mr. Triplett was referring to the Bremmers case as a murder case; and that the Captain said that Mr. Triplett made admission to him that he had been in the company of the Bremmers boy on the evening of August 31, 1954. That, also, Lieutenant Warnstadt would testify that Mr. Triplett had stated to him that he had seen Jimmie Bremmers around 8 o'clock on the night of August 31, 1954, as would, also, Detective Marvin Lambert.

Mr. Tacy: Does the State now offer to produce, in turn, the testimony just indicated of these various witnesses before the jury, if permitted to do so by the Court?

Mr. Beebe: That's right, sir.

Mr. Tacy: The defense objects to the introduction in evidence before the jury the testimony of the witnesses named, in addition to the testimony of William Dennison,

for the same reasons that were urged in the objection to the testimony concerning the confessions and tape recording obtained at the Mental Health Institute at Cherokee, Iowa, said objection having been heretofore made in con-
[fol. 15] nection with the testimony of the witness, William Dennison.

The Court: Overruled, at this time.

Ernest J. Triplett, sworn as a witness, testified:

Direct examination.

Q. You heard some testimony here this morning of a purported confession and a tape recording made at Cherokee, Iowa, in the early part of October, at the Mental Health Institute, in the presence of certain witnesses. I am going to question you about only one thing, and that is: Before the officers from Sioux City arrived to take this so-called confession and make this tape recording, were you interviewed by this Dr. Azordegan down there with reference to making a confession?

A. I was.

Q. What statements or representations or promises, if any, did Dr. Azordegan make to you before you decided to make the statements which were recorded and which were taken in writing?

A. He promised me that I was there for crazy and that I would be in there indefinitely, and that if I signed a confession, when it all blowed over, in two years or so, he could let me out.

Q. Did you believe that?

[fol. 16] A. I did.

Q. Is that the reason you gave him the statement you gave him?

A. I did.

Cross-examination.

By Mr. Beebe:

Q. Mr. Triplett, you have been advised that Dr. Azordegan is overseas, haven't you?

A. I wasn't until just a minute ago. I heard it; I wasn't advised.

Q. Do you recall when you were making this statement to Dr. Azordegan and Mr. Gibbons and Mr. Dennison, and Dr. Azordegan asked you: "Everything you tell us is—freely you talk to us without anybody push you?" Do you recall that?

A. I don't remember. I don't remember Dr. Azordegan asking me: "And you promise and you swear everything you tell us is true?" I do not think I would recall saying it if I heard the recording.

JOSEPH MATOUSEC, sworn as a witness, testified:

Direct examination.

My name is Joseph Matousec, I am a private detective. I live at 1718 Military Road, Sioux City, Iowa. If called [fol. 17] upon by the Police Department, I carry on investigations concerning missing persons. I have done so on one occasion. Lieutenant Warnstadt, after questioning Mr. Triplett on the second Sunday in September allowed me to interview Mr. Triplett for the better part of two hours. At that time I was not employed by anyone, nor had I been paid by anyone.

I told Mr. Triplett that I thought he was the man who had committed the crime; that if he would tell me how he did it I would get him legal advice, or some counsel, and attempt to help him. I said, "You cooperate with me and I will cooperate with you." I think I mentioned to him that if he did commit the crime, very possibly the only thing they could do to him would be to commit him to Cherokee because of his mental condition.

I found him cooperative to the point of exasperation. He told me if I would tell him how he committed the crime, he would admit he did it. There was no doubt in my mind that I could have gotten him to admit it if I had wanted to accept it on that basis.

Q. You mean he told you if you would tell him how the Bremmers boy was killed, he would admit it to the police?

A. That's right.

Q. Did he tell you why he wanted to know how the Bremmers boy was killed? Why did he want you to tell him how it was done?

[fol. 18] A. He told me he wanted to be cooperative with the police; and if I could explain how the boy was killed, and in what manner he was killed, he would sign a statement to that effect. I told him it wouldn't be necessary for me to tell him how it was committed; if he committed the crime he should know how he did it. He said: "I have no idea how the crime was committed."

Q. Did you make any statement to him as to how long he might be kept at Cherokee, if he made a statement to the police?

A. Well, I don't just remember about that. I think I probably told him that a matter of three or four years, or two or three years treatment possibly, and he would be released again, as I recall it.

Q. On condition that he did confess the crime to the police?

A. That's right.

Cross-examination.

By Mr. Beebe:

I was not employed by Mr. Triplett. I am working for him, but employed by Mr. Tacy. At this time, I am conducting an investigation on behalf of Mr. Triplett during the past six weeks. I think Lieutenant Warnstadt was in and out of there during the time I was talking to Mr. Triplett. Mr. Triplett did not tell me any of the details of the crime as a result of the statements I made to him. The [fol. 19] date I interviewed Mr. Triplett was either the 5th or 12th of September. He was arrested on the 2nd of September. Yes, I said Mr. Triplett said if I would tell him how the boy was killed, he would admit it.

Q. Mr. Matousec, who, at that time, knew that the boy was killed?

A. Well, of course, we were all going on the assumption that the boy was dead.

Q. What do you mean, "we were all going on the assumption."?

A. Any of us that were working on the case. It was my opinion we all figured he was dead.

I am speaking primarily for myself. There were several little incidents during the investigation that came up that would lead one to believe he was dead, I think. I think the case was carried on the police files as a "missing boy" case. I got no admissions at all from Mr. Triplett.

Redirect examination.

Before Mr. Triplett asked me to tell him how the boy was killed, I think I asked him four or five times to tell me how he was killed. I indicated to him that if he did go along with the police, the things I said about the Cherokee Hospital and securing him a lawyer would go along with a subsequent confession, if he made one.

[fol. 20] Recross-examination.

I did not secure counsel for Mr. Triplett, I couldn't afford it. It seems to me like the bar association appointed someone about a week later.

Redirect examination.

I made the statement to Mr. Triplett about securing a lawyer for him to get him to confess. Statements are often made by men in my profession to induce a man to confess and sometimes not followed through afterward. I am referring to my particular profession as a private detective.

I first met Mr. Tacy when he called me from the Martin Hotel and I was disinclined at first to enter into this employment on account of the small amount of money involved to pay for the time. I was instructed in this employment to try to find who committed the crime, and also, too, if I found evidence implicating Mr. Triplett, I said I would be the first one to get up and let everybody know it.

Further recross-examination.

Q. As I understand, Mr. Matousec, you would work for Mr. Triplett up to a certain point, and then if that point was reached, you would then work against him, is that correct?

A. That is not correct.

[fol. 21] Further Redirect examination.

I felt after my interview with Mr. Triplett I was pretty sure he didn't know anything about the crime. I think I could have got something if he knew anything about it.

Q. Now, based on the experience you have had in your profession over a number of years, you have interviewed a good many suspects, have you not?

A. Yes, I have.

Q. What would you say as to whether or not Mr. Triplett, in your estimation, is more—would be more likely to go along with suggestions and respond to suggestions and questioning than the average person?

A. Why, I think I mentioned at the start that he was cooperative to the point of exasperation. He was willing to agree to most anything and I think if you started a new line of questioning, he would go along with it.

REBUTTAL

HARRY J. GIBBONS, sworn for the State, testified:

Direct examination.

[fol. 22] My name is Harry J. Gibbons. I am now and was during September and October, 1954 Chief of Detectives of the Sioux Police Department. I was present in Cherokee, Iowa, at the time Ernest Triplett was interviewed by Dr. Azordegán, Lieutenant Dennison and myself.

Q. Will you state whether or not any question was asked Mr. Triplett as to whether his statements were given freely and voluntarily?

Mr. Tacy: Objected to as incompetent, irrelevant and immaterial.

The Court: He may answer.

Mr. Tacy: The testimony of the witness as to which this claims to be rebuttal referred only to a previous conversation with Dr. Azordegan before the officers Gibbons and Dennison arrived at the Mental Health Institute at Cherokee, Iowa.

The Court: Overruled.

Mr. Tacy: And the further objection that any statements that he made there were made under the same circumstances

as was the tape recording and the purported confession, and the defense interposes as to the question now before this witness the same objection interposed at the beginning against the statements of the purported confession and against the tape recording.

[fol. 23] The Court: Overruled, at this time.

A. There was.

I asked him the question and he said his statement was free and voluntary. He said the statements he made were true.

Cross-examination.

I do not know whether, prior to my arriving there, Dr. Azordegan had administered some drug to Mr. Triplett. I do not know whether Mr. Triplett was under the influence of a drug. I do not know of any conversation that Mr. Triplett had with Dr. Azordegan before I arrived there.

STANLEY M. CORBETT, for the State, was sworn and testified:

Direct examination.

My name is Stanley M. Corbett. I have been a lawyer for 21 years. I was president of the Sioux City Bar Association during the year 1954. I had an interview with Mr. Triplett at the office of Chief of Detective Gibbons on October 1, 1954. I informed Mr. Triplett that if he was being held against his will that he was entitled to seek a writ of Habeas Corpus. A number of the members of the [fol. 24] bar had suggested that the association had an obligation to explain that to Mr. Triplett. He said he was not held against his will and he wanted to help the police solve the murder. I told him the bar association would furnish him counsel but he said he did not want to leave the jail or the hospital, whichever place he might be.

Cross-examination.

Mr. Triplett gave two reasons for staying there. He had no other place to go and he wanted to stay there and work for Mr. Gibbons in attempting to solve this murder.

RUSSELL H. WHITE, called for the State was sworn and testified:

Direct examination.

My name is Russell H. White. I am assistant Chief of Police, Sioux City, Iowa. I am a graduate of the National Police Academy of the F. B. I., in Washington, D. C. I have had occasion to interview a large number of individuals. I interviewed Mr. Ernest Triplett on several occasions.

Q. Would you state what his relative mentality and alertness is?

Mr. Tacy: That is incompetent, irrelevant and immate-
[fol. 25] rial; no proper foundation laid; and leading; the witness incompetent and the testimony incompetent.

(Overruled.)

A. In my opinion, Mr. Triplett is normal; exceedingly —in my estimation I would say he is probably as hard a person to interrogate as I have ever encountered.

He is very alert. I don't think anybody, during my time of being with him and listening to him, ever was ahead of Ernie Triplett on interrogation.

Cross-examination.

Mr. Triplett was exceedingly cooperative. He made the statement many times that he wanted to "go along" with us. He was the type of subject that if you proved to him he was wrong he would give up his story, then admit he had told a lie and take out on a different story.

Q. Well, then, any statement he might make, even in the way of a confession, according to your experience with him, might just as well be an untruth as the truth, isn't that right?

A. I can't answer that; I don't know.

[fol. 26] Redirect examination.

Mr. Triplett was cooperative to the extent he wanted to be with us in the police station but not cooperative to the extent of telling us the things we wanted him to tell us

with reference to the Bremmers boy's disappearance. If we made a suggestion to him as to how the thing happened, he would not cooperate by agreeing. He was definitely not amenable to our suggestions.

(Arguments of respective counsel were made off the record.)

The Court: Well, I think that we are all of the opinion that it has repeatedly and quite consistently held that mere exortations to tell the truth are not a bar to a confession. Here, apparently, there have been no threats of reprisal, threats of physical harm or violence, no oppression, and the arguments in connection with this matter apparently assumed that some promise, or some reference of treatment might result if confessions were made, were in fact made. Of course, the jury is not bound to accept the testimony of any witness as absolutely true, even if the testimony is, in no respect controverted; and they should not do so if for any reason they believe the testimony as untrue or unreliable. It is the sole province of the jury to determine the weight and credibility of testimony, and, perhaps, in a pre-[fol. 27] liminary hearing such as this, that is the province of the court.

I am decidedly of the opinion that there is a jury question here, and I think the motion or request to exclude the confession should be, and the same is denied and overruled, and I think they should be admitted in evidence, and the jury under proper or what I consider to be proper instructions, be permitted to determine from the evidence whether they should give consideration to the admissions and confessions, on the finding that they were freely and voluntarily made, without any hope or promise of reward or fear of reprisal. So, they will be admitted in evidence; and the Court will endeavor to properly instruct the jury.

(All parties being present as heretofore, proceedings before the jury were resumed.)

JOSEPH DAVIDCHIK, called for the State, was sworn and testified:

Direct examination.

My name is Joseph Davidchik. I was acting Captain of the Sioux City Police Department during the early part of September, 1954. The first day I had a conversation with [fol. 28] Ernest Triplett was September 4th in the Detective Bureau. No one else was present.

Q. Will you relate what you said to Mr. Triplett and what he said to you?

Mr. Tacy: Does this relate to admissions?

Mr. Beebe: Yes.

Mr. Tacy: The defense objects to the reception in evidence of any admissions from this witness, on the same grounds that the objections were made in the preliminary hearing before the court heretofore held.

(Overruled.)

Mr. Triplett told me he had seen a small boy about 8 years of age, wearing blue jeans and a T-shirt standing on the corner of Prescott and Cottage. He said he was interested in cooperating in every way in clearing up this murder and I asked him why he referred to it as a murder and he didn't answer. He said that after 8 o'clock he went to the Flood Music Store and talked to a party named Beverly, talked to her about 10 minutes and went to his hotel about 9:45. We checked on the conversation with Beverly and it was about 6:45. That was the extent of my conversations with Mr. Triplett. I did not awaken him at any time during [fol. 29] the night.

Cross-examination.

I did not mention to the Grand Jury that Mr. Triplett had used the word, "murder," in referring to the Bremmers case. I don't know why I left it out. I did not make any suggestions to him. He always wanted to cooperate. I did not take part in any questioning of Mr. Triplett as early as two o'clock in the morning. There were quite a few reports of interrogation while he was in the station.

RUSSELL H. WHITE, for the State, was sworn and testified:

Direct examination.

I am assistant Chief of Police, Sioux City police department. I sat in on several interrogation meetings with Ernest Triplett.

I received a report from Sergeant Keith Weaver in my office on September 2nd, 1954, relative to a suspect, and I made an investigation by telephone to Mr. Flood, of the Flood Music Store to determine if he had a party working for him; to determine the type of automobile he was driving; to determine he was performing for him; where the party was living and how long he had worked for him. He [fol. 30] told me about a week and I told him to have him available in his office that morning and that I would like to talk to him. Lieutenant William Dennison and Detective Tony Bucchino went to the store to interview Mr. Triplett. I talked to him in Lieutenant's office on the afternoon of September 3rd, the day after he was arrested. I talked with him several times after that. I never made him any promises or threats and no one else did in my presence.

Q. Would you relate what the conversation was which you overheard or participated in the date of September 3rd, 1954, with reference to the missing boy?

Mr. Tacy: That is objected to as calling for the testimony of this witness as to an admission on the part of the defendant, for all the reasons urged heretofore against this testimony in the preliminary hearing heretofore held before the Court.

(Overruled.)

A. I overheard Triplett say he was up to a house on Cassleman attempting to make a sale, saw a boy answering Jimmy Bremmer's description, stopped his car and called him over to his automobile. The boy said he was running away and Triplett talked him into going back home. The [fol. 31] boy got on the fender of his car and rode back to his home at 2701 Cottage. The boy went into the house, put on a sport shirt and came back to the automobile. He denied that the boy was ever in the car. He said he couldn't convince the boy not to run away; that the boy went into the house came out the front door, went around the house

and that was the last he ever saw of Jimmie Bremmers. He said this was about eight o'clock or a little after that. He told the same story, substantially, about two days later, but later on varied his story as to the route he took.

I got a call at about 11 a. m. on the 29th day of September stating that the body of Jimmie Bremmers had been found and I went on what we call the Ridge Road, about two and one-half miles west on Highway 29, where the body was found on the south side of the road in a pasture.

Q. At that time, where was Mr. Triplett confined?

A. He was in the Cherokee Mental Hospital, at Cherokee, Iowa.

I had Mr. Triplett brought from Cherokee back to the Police Station and Lieutenant Dennison, Chief of Detectives Gibbons, Dr. Sainz of the Cherokee Mental Health Institute and I took him out to where the body was found. I stopped our squad car approximately 30 or 40 feet from being even with the body, back of it. I stopped the car on [fol. 32] the south side of the road headed east. Directly on the right of the car was a ditch, about 5 feet deep, the bank is about an 80 or 90 degree angle slope to it and about six feet high. At the top of the bank is a barbed wire fence and a pasture inside of that. No one had told Mr. Triplett where we were going. He went up the bank, took hold of the fence, looked over where the body was covered and said: "What's that?" Chief Gibbons asked him if he didn't know and he didn't answer. Chief Gibbons said "That's Jimmy." Triplett turned pale for 10 or 15 seconds and said: "Well, I don't know anything about that."

Cross-examination.

I would assume that Triplett knew we were entertaining a suspicion that he knew something about the case. He had been in custody of the police. He was under arrest, without a warrant.

Q. And he hadn't been taken before any committing magistrate and an information filed against him, had he?

A. No, sir.

Q. And, you were holding him all this time on suspicion, and taking him around all over the country wherever you wanted to, without taking him before a magistrate, as the law requires you to do, it that right?

A. That's right.

[fol. 33] Q. Now, you expect other people to obey the law, don't you?

A. Absolutely.

Q. Don't you think a peace officer should also obey the law?

A. Surely.

We never found any murder weapon, no fingerprints on the Triplett car. Lieutenant Dennison and Bucchino searched Triplett's room and the car he was driving. No murder weapon was found, no blood on his clothing or in the car. There were no fingerprints on the car, but some marks in the dust on the cowl and door that could have been made by the hand of a child.

HARRY J. GIBBONS, for the State was sworn and testified:

Direct examination.

I am Chief of Detectives, Sioux City Police Department. On the 29th of September, 1954, while at the Mental Health Institute at Cherokee, Iowa, I received a telephone message that Jimmie Bremmers' body had been found. After receiving this information, without discussing it with Mr. Triplett, at any time, Mr. Dennison, Russell White, Dr. Sainz, of the Mental Health Institute took Mr. Triplett out to where the body was. He got out, went up the bank and [fol. 34] took hold of the fence. I walked over and took hold of him. I did not watch his face. He stood there straight and still. I told him to stand right near me.

There were photographers taking pictures and I stayed right in this one spot, talking to him, then brought him back halfway between the bank and the road.

Q. Will you state whether you made any observations as to his color, or anything of that kind?

(Objected to as leading—Overruled).

A. No, nothing out of the ordinary—he had been pale for—he didn't change color much at that time, to my knowledge.

The ground across the fence was fairly level, but you could not see where the covering was on the ground from the road surface.

Q. Was there anything to indicate to you as you stood there in the road, any sign or anything, as to where the body was located?

A. No, there wasn't. There were some officers and other persons climbed the bank where I understood later the body had been found, but at that time, I didn't know about it.

[fol. 35] Cross-examination.

The bank on which the fence stands rises 5 or 6 feet above the swale. A tall man couldn't see over there. I mean standing in the ditch, I could not see over there. I do not mean to tell the jury that a tall man on the running board of a car and getting out could not see over the bank to where the body was lying. All I say is I didn't see anything.

Q. Now, at the time you got in this car and took Ernest Triplett on this ride out in the country, he was in custody of the law, wasn't he?

A. Yes, sir.

Q. Did you think you had a right to put him in the car and drive him any place you wanted to, just because he was there in jail?

A. Yes, I thought I had that right.

He was under the custody of the authorities at Cherokee. The doctor having charge of that treatment was with us. He was at no time removed from Dr. Sainz custody while I was present.

Q. Now, when you first took Ernest Triplett down to the station, you took him on suspicion, because a man by the name of Meisch had called and said there was a person driving a car out in that vicinity the night the boy dis- [fol 36] appeared and that that person was a salesman for the Flood Music Company; then Mr. Triplett was found at the Flood Music Company and taken into custody, isn't that right?

A. Yes, sir.

Q. Well, then, for three weeks you refrained from taking him before a magistrate where an information could be filed against him; is that right?

A. Yes.

Redirect examination.

Mr Triplett was in jail first on September 2nd and was taken to the Mental Health Institute September 15th, 1954. We had custody of him while he was in the station. He subsequently was taken back to Cherokee again.

Recross-examination.

We never completed our arrest by taking Mr. Triplett before a magistrate before he went to Cherokee the first time. He voluntarily committed himself for treatment for syphilis, I understand. There was no charge filed against him.

WILLIAM A. DENNISON, previously sworn, testified further:

[fol. 37] Direct examination.

I am the William A. Dennison who previously testified in this case. I was with Chief Gibbons, Assistant Chief of Police Russell H. White and Dr. Sainz when we took Ernest Triplett out to where the body of Jimmie Bremmers had been found. Before taking him out there, we did not tell him the body had been found. We all got out of the car and stood there a few minutes. Mr. Triplett and Mr. Gibbons was probably 10 or 12 feet away from us. Mr. Triplett scrambled up the bank, took hold of the wire and looked over where the body had been lying. He looked back, seemed visibly shaken and was pale looking. There was no one else in the field. I am slightly over six feet. I couldn't stand in the road and see the place where the body was lying.

The first conversation I had with Ernest Triplett was on September 2nd, 1954, at the Flood Music Store. Tony Bucchino was present.

Q. Would you relate what that conversation was?

A. I talked to Mr. Triplett about his actions on that particular night of August 31st, and I said, "Ernie, you have related to me before that at one time, for about a four year period, you used marijuana?"

Mr. Tacy: I object to this line of testimony. It has [fol. 38] nothing to do with the commission of this crime;

it tends to prove no issue in this case, whatever; going into the personal habits of the defendant, in the way of admissions. It is incompetent, irrelevant and immaterial.

Mr. Beebe: It will be tied into it.

The Court: This is a part of the conversation with the defendant—Overruled.

A. He said, "Yes, I did, for about four years I used it regularly." I said, "Have you used any of that or smoked any of that since you came to Sioux City?"

Mr. Tacy: I object to this testimony and, also, I request that the State keep this testimony in question and answer form so I can object to it. . . . I now object to the question and the answer to the question, whether, while in Sioux City, he had used marijuana. I think it's highly prejudicial, and is an attempt to deny the defendant a fair trial at the hands of the jury.

The Court: Does the State contend it has any materiality?

Mr. Beebe: Yes, we do.

The Court: Well, he may answer or continue his narrative of the conversation.

[fol. 39] (Overruled.)

Q. Mr. Dennison, what did Mr. Triplett say with reference to the use of marijuana, if anything, with reference to August 31, 1954?

Mr. Tacy: Objected to as incompetent, irrelevant and immaterial; highly prejudicial to the defendant; denying a fair trial at the hands of the jury; leading and suggestive.

(Overruled.)

A. He stated that on the night of August 31, that he was at the Meisch home about 7 p.m. and he says: "It comes to me now, that I went to the hotel to pick up an instrument, and while I was there I—maybe I did—I guess maybe I did smoke a marijuana cigarette or a part of one." And then I continued to question him about where he obtained the marijuana; and he said it was available if you knew where to find it; that it grew along the highways and railroad tracks, and you could pluck off the leaves and put them in your hat band and in two or three days time they would be dried out enough to smoke.

Yes, I had a further conversation with Ernest Triplett concerning the last conversation we discussed yesterday. [fol. 40] Q. What did you ask him?

A. I asked him what effect smoking of marijuana had on his physical condition.

Mr. Tacy: Objected to as incompetent, irrelevant and immaterial; calling for a conclusion and opinion of the witness; for the further reason that it is a question which, if answered, would prejudice the defendant in the minds of the jury. It relates to the crime of smoking marijuana cigarettes, or having them in his possession, and does not tend to prove any issue in this case.

(Overruled.)

A. He said that it stimulated him sexually.

Q. Did you have any further discussion?

A. I did.

Q. What was that?

(Objected to—Overruled.)

Q. As to whether his sexual desires pertained to men or women.

A. He stated that he had committed acts of perversion with both sexes.

Mr. Tacy: I move to strike the answer for the reasons above cited.

(Overruled.)

[fol. 41] Cross-examination.

Q. How many days altogether was Ernest Triplett in custody of the law before you filed this preliminary information against him in Justice Court?

A. Well, counting the days from September 2nd to the 16th was about all I would say he was in our custody.

He was held by us in custody another six days after he was brought back from Cherokee the first time, about 20 days altogether. We were putting him through many series of questioning during the 20 days he was in the Police Station. Yes, we questioned him many times. He was questioned, possibly most everyday. He was not questioned

after midnight to my knowledge. I possibly told him I thought he was responsible for the disappearance of the Bremmers boy.

Q. And you wouldn't take "No" for an answer, would you?

A. No, I wouldn't.

At the time the body was found, the National Guard and other people had searched the entire vicinity where the body was found. No hammer or anything of that kind was ever found. I don't believe I told Mr. Triplett that I was going to convict him or somebody else, and I didn't care who.

[fol. 42] Exhibits K and K-1 were written out by Mr. Triplett and at different time he would ask me what to put down.

Q. Well, isn't it a fact, Mr. Dennison, that you who had Mr. Triplett in charge wanted a statement from him to the effect that he didn't want a lawyer?

A. Well, he stated a good many times that he didn't want any lawyer. At that time he didn't see any reason he should have a lawyer, and he wanted to stay around there and try and convince us he didn't know anything in particular about this crime. As time went on we told him: Well, if you don't want a lawyer and are serious about it, why, write out something to that effect.

No, he didn't suggest writing it out. I wanted it for a permanent record, so that months later I would know what the facts were.

Q. So that months later, if a question was raised like its being raised here today; that Mr. Triplett didn't have the benefit of a lawyer while you had him in custody without charging him with a crime, you wanted to be able to produce this paper to show that the reason he wasn't represented by a lawyer then was that he didn't want a lawyer, is that right?

A. Well, that's a pretty fair conclusion.

[fol. 43] WILLIAM A. DENNISON, previously sworn as a witness, was recalled and testified:

Direct examination.

I had a conversation with Mr. Triplett at the Cherokee Mental Health Institute on October 6, 1954. Chief Gibbons, Bill Sanguin, Dr. Azordegan and myself were present. We arrived at the Institute about 9:20 a.m. We saw Mr. Triplett first about 10:30 a.m. We talked to him until lunch time and again after lunch for about 30 minutes. Then there was a break of about 20 minutes, then we interviewed him possibly 45 minutes.

During that conference in the afternoon I did not hear any threats or promises being made to Mr. Triplett. He said his statements were voluntarily made at about one o'clock in the afternoon.

Q. Who was asking most of the questions at that time?
A. Dr. Azordegan.

I was present in the room where the conference took place. It was a small room with two single beds in it. Mr. Triplett was sitting on one bed and Dr. Azordegan was sitting across from him on the other bed. Mr. Gibbons and I were sitting on the edge of the bed and Bill Sanguin was standing, there was a chair in there and he might [fol. 44] have sat on the bed sometimes. Dr. Azordegan said: "I want to talk to you and I want you to know that nobody is harrassing you or pushing you, do you know that?" And Mr. Triplett said, "Yes", and Dr. Azordegan said he would like to have him tell what happened on August 31 in regard to the Bremmers boy. Mr. Triplett said he picked the boy up in his car and took him out to the spot where the body was found, that they got out and stood by the side of the road talking and he, Mr. Triplett, started to hug or love and kiss the boy, and the boy didn't mind too much, that he attempted to open his pants, and the boy started to run and he chased the boy and hit him in the back of the head with his fist and the boy fell down on his face in the ditch. He said he didn't know whether the boy was dead, that he didn't move; that he picked him up, put him through the fence and let him lie there and got out of there as soon as he could, returned to the hotel,

parked his car and took an accordion up to the hotel. He said: "I came back the same way I went out; it isn't too clear to me, but I know I got back alright."

Dr. Azordegan asked him if he was going out there for a little party and he said he was. Chief Gibbons asked him if he intended to commit an act of sodomy on the boy and he said he did, then said he didn't know what his intentions were and that he just intended to go for a ride. Dr. Azordegan asked him what for he was opening the [fol. 45] boy's pants and he said to see if he was a boy or a girl. Dr. Azordegan asked him when he was picked up by the police and he said September 2, which he said was Wednesday. Dr. Azordegan asked him if that was the day after he killed the boy and he said, "Yes".

A recording was made of this last interview and we went over the same matters and he admitted substantially the same things he did in the former interview.

Q. Who set up the machine for that recording, Mr. Dennison?

A. I believe it was Bill Sanguin and Dr. Azordegan.

Q. And where did the second interview take place?

A. Just across the hall and a few doors away, in another small room.

I believe the first interview and the second interview were practically verbatim as to the questions asked and the answers given. I have the recording in my possession and am able to produce it.

Mr. Beebe: We will ask the witness to produce the recording at a later time, but at this time this is all our interrogation of this witness.

[fol. 46] Cross-examination.

I don't know whether anyone had received a call from Dr. Azordegan to come down to the Mental Health Institute on October 6, 1955. I knew we were going down there to interview him. Dr. Azordegan began questioning him the first time. It was my understanding he was one of the doctors in charge down there. I do not believe I said that Dr. Azordegan began to talk to Mr. Triplett immediately and asked him if any threats or promises had been made. He said whatever he said was without any

harrassment; or anybody pushing him; he wanted to talk to him.

I do not know where Dr. Azordegan went after this interview. I know he is not at the hospital now.

Q. You know he is not in this country anymore, is he?

A. I heard that he wasn't.

I had no knowledge of any drug being administered to Mr. Triplett. I do not know what Dr. Azordegan said to Triplett before we arrived there.

Q. Now, this interview was on the 6th of October, 1954, and Mr. Triplett was taken into custody on the 2nd of September, 1954, was he not?

A. Yes, sir.

[fol. 47] Q. He was still restrained of his liberty,, either by the police or by the hospital, at the time this interview was taken, wasn't he?

A. Yes.

Q. And he hadn't been charged with any crime at that time, had he?

A. No.

Q. Then, after you got this so-called confession, which was recorded on a tape recording machine, you then filed some charges against Mr. Triplett, in Justice Court in this township, did you not?

A. After some period of time, yes.

During the time Mr. Triplett was held in police custody, he had been interviewed almost daily, and questioned about the Jimmie Bremmers missing boy case.

Q. Well, when a man has repeated over and over for 19 or 20 days that he doesn't know anything about a crime, don't you take "No" for an answer and take him before a magistrate or do something with him, to give him a chance to get a lawyer and put up a bond and attempt to prove he isn't guilty?

A. He had a chance to get a lawyer.

Q. I didn't ask you that. Now, please answer my questions. We have got over that business of his not wanting a lawyer while he was in jail. I am asking you now; if he [fol. 48] reiterated over and over that he was innocent why didn't you take him before a magistrate before you got this confession, instead of afterwards?

A. Because I still thought he was guilty.

I would have liked to have him tell me. No, I was not holding him for the purpose of wearing him out. I was entertaining the hope new evidence would come to light. I don't like the term, "break down". I was hoping he would tell the truth if he had committed any crime or knew anything about the missing boy. On October 6th, he admitted taking the boy out to the scene of the crime.

Q. That was when he had been under the care of Dr. Azordegan for some time, wasn't it?

A. Yes.

Q. And, Dr. Azordegan was able to do what you were not able to do, wasn't he?

A. Yes;—he made the confession up there.

Q. Dr. Azordegan is some sort of a psychologist, or something of that nature, isn't he?

A. I don't know what his background is or what degrees he has from school.

Q. But he did get Triplett in the frame of mind, somehow, to make this so-called confession, didn't he?

A. Well, Mr. Triplett did. I don't know what prompted him to do that.

[fol. 49] I didn't have to do any work on Mr. Triplett to get him to talk and make these statements that were finally recorded on the tape recording. I was just doing some good listening. I don't know how long after that he left and went to a foreign country.

Q. You don't know whether Mr. Triplett had any drugs or sedation of any kind before that, do you?

A. No, I don't.

Q. You don't know whether he had been given a sort of brain washing, do you?

A. No, sir.

Q. Well, Dr. Azordegan is skilled in that sort—in the business of administering drugs and taking statements from patients, is he not?

A. I don't know.

Redirect examination.

I did not notice any difference in his attitude, demeanor or reactions at the time of the interview on October 6th than the other times I saw him. He looked a little more

rested when I seen him up there than before he went up there.

Recross-examination.

Q. Well, isn't the potency of a sedative drug such that it causes a person to sleep a great deal?

[fol. 50] A. I imagine it would.

Q. And that makes a person look rested, if he had been sleeping a day or two, doesn't it?

A. It should.

HARRY J. GIBBONS, recalled for the State, previously sworn, testified:

Direct examination.

Q. Did you accompany Mr. Dennison to Cherokee on the date of October 6th, 1954?

A. Yes, sir.

Q. Who had requested you to come to Cherokee on that date?

A. Dr. Sainz had been talked to over the telephone.

We had not had any talk with Dr. Azordegan before going down. We saw Mr. Triplett about ten o'clock a.m. Bill Sanguin, Mr. Dennison, Dr. Azordegan and I interviewed him until about noon, but got nothing of material value. Then, we started interviewing him about two o'clock, p.m. In the morning interview and in the afternoon interview I did not hear any threats or promises made to Mr. Triplett. It was given of his own accord. The first interview in the afternoon was in Mr. Triplett's room in Ward 9, North. The one that was recorded was [fol. 51] in the office of Ward 9, North.

Q. Will you relate the conversation, what was said by Dr. Azordegan and what was said by Mr. Triplett, in that first afternoon interview?

A. Dr. Azordegan stated that Triplett wanted to talk to us—and tell us the truth about the Bremmers boy; and he said that Triplett had admitted it and wanted to tell us about it. That he had taken him for a ride in his car——

Q. Now, who is "he"?

A. Triplett.

Q. Had taken who for a ride?

A. Had taken the Bremmers boy for a ride in his car, and out to the edge of Sioux City, north of Sioux City where the body was found; that he had attempted to make love to the boy; the boy had run away from him; and that he, Triplett, had chased the boy, striking him, knocking him down from a standing position—he said the boy was standing up when he struck him—and he had carried the boy up this embankment and put him through the fence.

Mr. Triplett said he hit the boy with his fist. He said he thought he fell on a stone. He was asked if he hit him with some tool from the car or a wrench or a hammer; and he said he didn't have any tools in the car. I asked [fol. 52] him if he hit the boy with a rock and he said "no." He was asked if the boy was crying or moving and he said he was lying quiet and didn't move. He said he run his hands through the boy's hair and loved and kissed him and opened his pants. He was asked why he opened the boy's pants and he said he wanted to see whether he was a boy or a girl.

Q. What did you ask him?

A. I asked him if he intended to commit an act of sodomy with this young boy. He stated that he did. And, I asked him—then I said: "What did you intend to do? Did you intend to insert your penis——"

Q. Just a minute, was anything said later as to whether the boy had been killed or not?

A. No, not at that time.

Q. You don't recall anything?

A. Yes, I asked him when he first found out that the boy was killed. He stated he didn't know the boy was killed until we went to the scene of the offense.

We went to the scene on September 29. This conversation was later recorded. The conversations that were held at the time of the recording were substantially the same as the conversations to which I have testified. I have heard this recording played since it was taken. It is the one that was made up there at the hospital. I can identify [fol. 53] the voices on it. The voices of Dr. Azordegan, Bill Sanguin's, and my own. Bill Dennison may have

several lines in it. Triplett's voice appears on the recording.

Cross-examination.

The tape recording machine wasn't visible in the room at that time. I can't answer whether Mr. Triplett knew his statements were being recorded. I did not tell him nor hear anybody else tell him that his voice was being recorded. I am not sure that the tape recording states that the statements made were voluntary, that Mr. Triplett was advised of his constitutional rights, or that he was entitled to a lawyer. He hadn't been taken before a judge until after we got this tape recording. Mr. Triplett did use the words concerning the act of sodomy. Dr. Azordegan asked him, I do not remember his exact words. I heard a report that Dr. Azordegan had gone to a foreign country. Bill Sanguin told me he was no longer at the hospital.

WILLIAM A. DENNISON, recalled for further cross examination, testified:

Further cross-examination.

I arrived about 5:00 p. m., at the scene where the boy's [fol. 54] body was found the same day.

Q. Did you examine the ditch or swale that extends from the road to the bank?

A. Yes, I observed everything.

Q. You didn't see any blood stains in that ditch, did you?

A. No.

Q. And you didn't see any blood stains on the bank?

A. No.

The only blood stains I saw was several feet from where the body was lying. If the boy was hit on the head with a hammer with such force and violence as to drive certain clean cut portions of the skull into the brain, in two places on the back of the boy's head, I presume there would be some bleeding at the spot where he fell in the ditch or swale.

The recording we made shows that Triplett was asked if he made the statements in it voluntarily and that no

one was harrassing or pushing him. Yes, substantially those words are in the recording and the jury will hear them when it is played. The tape has not been altered or any part deleted since I have had it.

Redirect examination.

I have heard the recording played on several occasions. [fol. 55] Nothing has been deleted and nothing added to it. There are some preliminary matters on it that do not relate to the conversation with Mr. Triplett.

I do not know whether the Bremmers boy was killed in the ditch or over the fence where the body was found.

Recross-examination.

Mr. Triplett said he ran after the boy and hit him and he fell on his face in the ditch.

BILL SANGUIN, called for the State, was sworn and testified:

Direct examination.

I am Bill Sanguin, I am 27 years old and have lived in Cherokee, Iowa all my life. Since September, 1951, I have been employed at the Mental Health Institute, Cherokee, Iowa, and was so employed during the month of October, 1954. I was present at the interview with Mr. Triplett on October 6, 1954. Mr. Gibbons, Dennison, Dr. Azordegan and myself were there. The morning interview lasted about an hour and there were two interviews in the afternoon. The third interview was recorded. I set up the machine. I have had some experience in making recordings. I operated the machine. This recorded interview took place in North 9 in the Ward office. The [fol. 56] machine was sitting on the floor and the microphone was on the desk. I did not hear any promises or threats made to Mr. Triplett. I have played the recording back and heard it played back on several occasions. It was a full and accurate representation of what took place there that day. If I heard the recording played back here in court, I could identify the various individuals who are speaking.

Cross-examination.

At that time I was on the Wards. I was on Ward 9 that day. My duties were handling the patients, ward work, book work and such. One of the detectives asked me if they could possibly get it typewritten or recorded and Dr. Sainz ordered me to take care of their wishes.

Q. You didn't from Mr. Brinegar, the Superintendent of the hospital, to set up a tape recording and record the voice of Mr. Triplett, did you?

A. Not to my knowledge.

Q. Well, you know whether you did or not?

A. No, I didn't.

Q. Well, all right, then answer me. And he wasn't present at the tape recording, was he?

A. No.

The recorder was too wide to go under the desk. It was between my feet.

[Vol. 57] Q. You did not, sir, call Mr. Triplett's attention to the fact that that instrument down there between your feet was taking a record of what was said, did you? Now, answer to the jury there.

Mr. Beebe: Just a minute. He can ask the question; he doesn't have to admonish the witness; and I object to counsel doing so.

The Court: Sustained. I don't believe it was required in this instance.

Mr. Tacy: You may strike that part if the Court ruled against it, "Now answer to the jury."

The Court: I don't believe that was the portion to which the objection was made.

I do not remember that Mr. Triplett's attention was called to the fact we had a machine there to record his voice. If I said anything like that it would be on the tape recording.

Q. Well, I will ask you again, Mr. Witness. I want to be fair with you. I want you to state whether you know of your own knowledge, whether those statements concerning Mr. Triplett's constitutional rights, his right to a lawyer, and notification that his voice was being recorded appear or will be contained in the recording as a preface

[fol. 58] to any statements that he may have made. Do you know that of your own knowledge or don't you?

Mr. Beebe: Just a minute, now. This question is objected to for the reason that, as a preface to the question, counsel states what purport to be certain rules of law, which invades the province of the Court and on which the Court will instruct the jury as to what the law is; and because of the fact that the preface to the question contains those statements, it is objected to for the reason that it is incompetent, irrelevant and immaterial.

The Court: I think, perhaps, in view of the phraseology used in counsel's question, the Court should, at this time, state that the jurors will be instructed that there is no law of this state which requires that law enforcement officers must inform persons in their custody, prior to their making a statement or confession, that the same may be used against them at a trial. They will, also, be instructed that the fact, alone, that at such time a person making a statement or confession is not represented by counsel does not make the statement involuntary or inadmissible, if the same is, in all other respects, admissible.

[fol. 59] William A. Dennison, recalled by the State, testified:

Further direct examination.

I was present at the Mental Health Institute at Cherokee, Iowa, on October 6, 1954, when a tape recording was made of an interview of Mr. Triplett. I have heard the recording played since it was taken. It is an accurate reproduction of what was said there and what transpired at that time. I have the recording in my possession. It is complete and contains everything that was said there at that time. There have been no additions to or deletions from it.

Q. Will you produce the recording, please?

(Witness complies.)

(The article referred to was marked "State's Exhibit P" for identification.)

Exhibit P is the tape recording taken on October 6, 1954, at Cherokee, Iowa. There is some conversation on there that has no bearing on the interview, but the recording was continuous. The first few feet of it relates to actions that were transpiring in the office but did not relate to the immediate interview with Mr. Triplett.

[fol. 60] OFFER IN EVIDENCE

Mr. Beebe: At this time the State offers in evidence State's Exhibit P and requests that the Court allow the State to play this recording in the presence and hearing of the jury.

Mr. Tacy: The defense objects to the introduction in evidence of the tape recording of the purported confession of the defendant and to the reproduction or playing of the same in the presence and hearing of the jury, for the reason that said statements of the defendant, if are revealed by the tape recording which has been identified by the witness William Dennison, said statements were made after promises of leniency and help to the defendant on the part of certain officers formerly having him in charge; that said statements, if any were made or revealed by the reproduction of the recording before the jury, were made after and because of a promise made to Dr. Azordegar to the defendant just prior to the making of the recording, which promises were of leniency to the defendant.

The defense further objects to the introduction in evidence of the tape recording heretofore identified to the witness William Dennison, and objects to the playing of said recording in the presence and hearing of the jury, for the further reason that the same was made at a time when the defendant had been held in custody for a period of some 20 days by the Police Department of Sioux City, [fol. 61] Iowa, for a period of some 20 days, and subjected to questioning and so held without charge or being taken before a magistrate.

The defense objects for the further reason that just prior to the making of said recording the defendant was a patient in the Mental Health Institute at Cherokee, Iowa, was not represented by a lawyer, was not told at the time of the recording that his voice was being recorded, and

was not told that he had a constitutional right not to make any statement. For all of these reasons, the defense now objects to the reproduction or playing of said tape recording in the presence and hearing of the jury.

The Court: The objection is overruled.

(Thereupon, Mr. Sturges commenced the play-back of the tape recording, State's Exhibit P on the play-back machine, which had been placed on the reporter's desk.)

Mr. Beebe: Will you stop the recording, I would like to call Mr. Sanguin to the stand, if I may, for a moment.

Bill Sanguin, recalled by the State, testified:

Further direct examination.

Q. Mr. Sanguin, we have played a portion of the first [fol. 62] part of the recording and there was someone talking there. I wonder if you can identify that voice?

A. That voice was Dr. Sainz.

That portion was taken at some other time before the conversation with Mr. Triplett. We knew the rest was blank and we went on down to the blank part. What the jury just heard so far has nothing to do with the Triplett interview. It is Dr. Sainz, about some other patient. After this, I ran it through far enough that we could get the transcription that we were after in a separate portion by itself.

The play-back continued in blank until there were voices heard again; whereupon, the play-back was stopped.)

Q. Mr. Sanguin, there has been a voice which just sounded on the recording I wonder if you can tell us whose voice that was?

A. Dr. Azordegan.

The second voice is myself and the other is Mr. Triplett. The voice stating "That's Chief Gibbons over there." was Triplett answering Dr. Azordegan.

(Recording machine turned back.)

[fol. 63] I'm sorry. I didn't understand. That's Triplett talking.

(Recording machine stopped again.)

Mr. Beebe: Your Honor, I would like to ask the jury if that is loud enough so that they can hear it?

The Court: It may be too loud; I don't know. It may be too loud to be distinct.

Mr. Tracy: I can't hear it good.

Mr. Sturges: Do you think it would work if we turned it another way? Is it too loud or not loud enough?

A juror: It's more the person with the accent talking.

A juror: I think it's too loud.

A juror: I think it's too loud, your accent.

Mr. Sanguin: Turn it a little more on the bass again.

(Thereupon, Mr. Sturges resumed the play-back of the tape recording.)

Q. Mr. Sanguin, at this point there is discussion which is not clearly intelligible: Did that relate to something else [fol. 64] that was transpiring in the room at that time, do you recall?

A. Yes, I think at that time someboy stuck their head—the afternoon shift comes on at 2:30—and I think at that time somebody was sticking their head in the door or something and I was trying to ease around quietly and tell them to stay out until we got done.

By Mr. Tacy:

Q. Mr. Sanguin, will you tell the jury whether the man with the heavy foreign accent is Dr. Azordegan? Is that the name?

A. Azordegan.

Q. Do you know what nationality he is?

A. I think he is Iranian; I'm not sure. He is from somewhere in—I wouldn't say for sure.

By Mr. Beebe:

Q. And, Mr. Sanguin, I will ask you if the other voice, the voice replying—a rather slow voice—was that the voice of Mr. Triplett?

A. Replying to Dr. Azordegan's questions?

Q. Yes.

A. Yes, it is.

The sound of a ring just heard on the recording. That part of the conversation now being played is between my- [fol. 65] self and somebody else. I think it related to the conference with Mr. Triplett. Somebody was asking me what the "scoop" was, or something. I am not sure, I think it was Dr. Sainz calling.

Q. Mr. Sanguin, there is now a voice on the recording which follows an interval of rather blurred, indefinite conversation. I will ask you whose voice that is now coming on the record?

A. Dr. Azordegan.

The voice saying, "What did you and Jimmy talk about on the way out there, Ernest?" is Mr. Gibbons' voice. The voice saying: "Speak up, Ernie, I can't hear you," was my voice, Bill Sanguin. The voice saying: "Ask him if there was any cars that went by," was Bill Dennison's voice.

Q. Mr. Sanguin, there was a different voice, according to my interpretation, that said, "You carried what? Could you identify that voice?

A. I didn't even catch that. Play it back.

(Mr. Sturges complied.)

A. I still haven't got it. You didn't go back far enough. I don't even hear it. Maybe you are not back far enough on the tape. I don't catch it. It's wound up so tight there. [fol. 66] (Mr. Sturges turned back the tape and resumed the play-back.)

The first voice asking questions was Dr. Azordegan, the second one was Mr. Gibbons. The voice saying, "Ernie, what did you do after you hit him with your hand," is my voice, Bill Sanguin. The last witness who was interrogating Mr. Triplett was Mr. Gibbons. When Mr. Gibbons made the statement, "That's all," that was the end of the interview. That recording was a full and complete record of what took place that afternoon. It is the same reproduction and an accurate reproduction.

STIPULATION

It was stipulated and agreed between counsel for the State and counsel for the defense that the following is a full and correct transcription of the tape recorded interview

just played before the jury and which was recorded at the State Mental Institute at Cherokee, Iowa, on October 6, 1956.

HARRY GIBBONS: Sure, Doctor, I'd prefer that you ask the questions.

By Dr. Azordigan:

Two gentlemen come from Sioux City who know about anything you talk to us about a few minutes ago, and I [fol. 67] hope we can clear this case with your help. My name is Dr. Azordegan. You know me?

A. Yes.

Q. (By Dr. Azordigan) Can you tell me your name?

A. That is Chief Gibbons over there.

Q. No, I want you to tell me—what is your name?

A. Triplett.

Q. What is your first name?

A. Ernest.

Q. How old are you?

A. Fifty.

Q. Fifty years old—are you married?

A. No.

Q. Can you tell me what day you arrived in Sioux City?

A. I believe so.

Q. You believe so.

And do you remember the name of this road?

A. No.

Q. You don't remember, but you are sure that you stopped same place with boy which the police found the body?

A. Yes.

Q. Very good. O.K. As soon as you stop the car, now tell me everything you told me before. (Pause) You stop the car—what happened?

A. Well—I can't explain what really happened.

Q. You told me already:

[fol. 68] A. I got out from behind the steering wheel I know that. On the road—

Q.

A. Well—naturally he had got out on the other side.

Q. He got out on the other side and then what?

A. Well, I go around the car to where he is—and—we stand there talking at the edge of the car.

Q. Good. Are you playing with boy?

A. Well—yes.

Q. What kind of play was it? (Slight pause) Kiss him—did you play with his hair?

A. I kissed him and loved him up, and he didn't seem to mind so much.

Q. I don't get it. What happened?

A. He didn't seem to mind so much.

Q. And what happened later?

A. It seems to me I can't exactly tell you all that happened. The picture cause my mind is not clear on it.

Q. But you do remember you started to open his pants?

A. Yes.

Q. For what intention did you open his pants?

A. Whether I thought he was a girl or a boy I didn't know.

Q. Good. What happened? As soon as you started to open his pants what he did? What action he did?

A. He started to run away from me.

Q. And what did he run away from?

[fol. 69] A. Towards the fence.

Q. What happened? What you do?

A. I ran after him and grabbed him.

Q. Whats that?

A. I ran after him to get him.

Q. You grabbed him too. And what happened?

A. I think he fell on the stone. I mean—I mean—I hit him, and I think he fell on the stone.

Q. You hit him after he turned around or you hit him before he fell down?

A. I dont' remember. I think I hit him standing up.

Q. You hit him standing up. Where you hit him?

A. In the back of the head.

Q. Back. Is it right or left? What side was it?

A. I am right-handed.

Q. You are right-handed, and you hit him on the right side or left side?

A. I don't know as to that.

Q. O.K. After he fell—one question I have—as soon as you come out of the car, you have something in your hand, haven't you?

A. No, we have no tools in the car.

Q. You have not any tools in your car. Only you hit him with your hand.

A. Uh-huh.

Q. Can you tell us? After he fell down, you found him dead?

A. No, I didn't know he was dead.

Q. How you find him?

[fol. 70] A. Lying on his face.

Q. Uh-huh. Crying? Make noise?

A. No.

Q. Without any noise?

A. Yes.

Q. How you find he was dead?

A. Well, I didn't. I just took him, put him through the fence and over there and let him lay.

Q. I didn't get that.

A. I just took him over the fence and let him lay.

Q. Let him lay?

A. Yes.

Q. Uh-huh. As soon as you carried him—you have little blood on your coat or your jacket. For this reason you took your clothes to Laundry after that?

A. If they're dirty I always send them to the laundry.

Q. Have blood in it too? Any blood in it?

A. I didn't notice any blood in it.

Q. For what intention you send your clothes to the laundry?

A. When they get dirty I send them to the laundry.

Q. Do you remember? What was dirty—your coat or your jacket? with blood—or with dirt or something while you fight with boy?

A. It was warm night, and I didn't have any jacket on.

Q. Oh.

You have on the shirt?

[fol. 71] A. That's right.

Shirt and pants.

Q. And your shirt was dirty. After you fight with boy?

A. You get the shirt dirty right away whether you fight with anybody or whether you don't fight.

Q. The same time you fight with boy did the boy grab you some place on the body?

A. No.

Q. He throw to you some stone or something like that?

A. No.

Q. And—how you can explain you, without the boy have any rejection about your actions, you hit the boy and you kill the boy?

A. I can't explain that, because I can't and they've been trying to find out and ask me to explain that and how I done it down there for a week or two weeks.

Q. Would you please, and now I would be very happy, you tell me to ask everything, can you tell us, except you and the boy, was anyone else around?

A. No.

Q. And you believe you are the man who killed the boy by your punch or something else?

A. It looks that way.

Q. It looks that way?

A. It looks like I was the guy who killed him.

Q. And you are sure you are the one who kill him?

[fol. 72] A. How could I be sure of it?

Q. You tell me already.

A. I'm not a doctor. I wouldn't know whether the boy was dead or unconscious.

Q. Whether dead or unconscious, you are the man who knocked him down?

A. Yes.

Q. And you are the man who find the boy that will not talk or will not move and you throw him over the fence.

A. Uh-huh.

Q. Why, after this business——

(Interference, other conversation, telephone, etc.)

Q. Now, look, as soon as you knocked down the boy and carried the body and put it over the fence, you remember, can you tell me now, what road and what way you took to come back?

A. It is very blurred in my mind, but I know I got downtown.

Q. Pardon. Excuse me, I don't get it.

A. It is very blurred in my mind, but I know I got downtown.

Q. You remember this morning you tell us you had been to home of one lady, are you—you didn't tell us truth this morning, because if you were around and out with boy how you can go to this lady? Can you tell us which one is right? You was with boy or you was with this lady?

[fol. 73] A. She wasn't home, so I wasn't with her. I was to her home.

Q. You are with boy, or with this lady, or alone?

A. I was to her home earlier in the evening alone.

Q. A-ah! That means that you had not been after 8:00 o'clock. Before 8:00 o'clock you was at this lady's. That's right?

A. Yes.

Q. Good. One time you come up soon as you find the body of the boy dead and threw him over the fence.

How do you feel about that?

A. I don't remember it.

Q. But, you remember you already knocked down the boy and took him over the fence? That's right? You remember that? How do you feel after that?

A. I have no feelings. I uh—

Q. No care about that.

A. No black out. No black out.

Q. No black out. You was completely normal.

A. I can describe even how I got downtown.

Q. Good. As I asked you already this morning, I am going to ask, and I wish you answer me. Have you some fight or some trouble or accident or the claim of you had few years ago some unfortunate way?

Say three years ago?

A. I just can't place it.

Q. But you remember it, but you don't remember the place?

A. Yes.

[fol. 74] Q. How many was? How many same cases you did in your life?

A. Well, not too many cases.

Q. How many cases was it similar to this? (pause) Huh? How many cases was?

A. Two or three, I guess.

Q. You remember the last one besides this Jimmy? Where was it?

A. Missouri Valley, Iowa.

Q. Missouri Valley, Iowa. How old was this boy?

A. This boy was about nineteen.

Q. And you killed him too?

A. No.

Q. What you do with him? Hurt him?

A. No.

Q. What did you do with him?

A. Went down on him.

Q. Huh?

A. Went down on him.

Q. What do you do? I don't get it.

A. You mean what I done? I didn't have any fight with this guy.

Q. Now, I ask you, besides this Jimmy, which you believe by your fight or your hand boy was killed and you killed someone in the same way?

A. No.

Q. Not anyone else?

A. No.

Q. Nor any place else?

A. No.

Q. Didn't you say this morning you killed someone?

[fol. 75] A. Yes.

Q. Can you swear everything you tell me is true, nothing but true?

A. That's right, if I can remember what it was.

Q. Are you sure now, about this Jimmy, everything you tell me is true?

A. Yes.

Q. Are you sure anything you tell me it was fully your idea and no one pushing you or harassing you?

A. Yes.

Q. You believe this boy was killed by your hands and take the body and put over the fence by you and no one else, and you swear no one else was present?

A. There was nobody else present.

Q. Except you?

A. Right.

Q. I have no question. Have you any questions?

Q. Did the little boy stop any place from the time you left his home and the time you got out on the highway?

A. Not that I know of.

Q. He didn't go to a grocery store anywhere?

A. No.

Q. Nor any kind of market or ice cream store?

A. No.

Q. And how much money did you give him, Ernie?

A. About a quarter or thirty-five cents——

[fol. 76] I don't know what it was.

Q. He didn't get a chance to spend any of that though, did he?

A. No.

Q. He didn't get a chance to spend any money?

(Bill Sanguin) Speak up Ernie, I can't hear you.

Q. By Harry Gibbons) Bill, would you like to ask any questions?

One thing more—Ernie, is it possible that you could have hit him with a rock?

A. Could have.

Q. By having it in your hand and picking it up and swinging it at him with a rock?

A. I don't remember picking any rock up.

Q. You didn't pick a rock up and throw it at him did you when you were crawling up that bank?

A. Don't think so. I'm not a very good ball player.

Q. I see. Uh-huh. Did he bleed much, Ernie?

A. I don't know. I didn't notice.

Q. Pretty dark?

A. Yes.

Q. But could you see the fence right from there and was it light enough to see the fence?

A. You could see the fence when you was close to it.

[fol. 77] Q. I see. What side of the road was you parked on?

A. I thing it was the right side.

Q. Then the little boy ran across the road, didn't he before he got to the bank?

A. I guess so.

Q. Huh?

A. I guess so.

Q. Or had you turned around and started coming back towards town?

A. I come back the same way I went out.

Q. But, when you came back you came back by yourself?

A. Yes.

Q. What I'm getting at Ernest, is as you went out there your car would be on the right hand side of the road?

A. Huh? It would. Would it?

Q. Well, either way you was headed the car would be on the right-hand side of the road if you had kept on going. Now, was the car close to the bank or was it across the road from the bank where the ran up on?

A. It was close to the bank. Close to the bank.

Q. Closer to the bank. You wouldn't have to cross the road to get up on the bank then?

(Ask him if there was any cars that went by.)

Q. Was there any cars that went by, Ernie?

A. Not that I know of.

[fol. 78] Q. Could you see anybody walking along the road?

A. No.

Q. What was the first thing you did when you left the scene there?

A. Turned around and went to the hotel.

Q. Did you go in and wash up—have to wash your hands or your clothes?

A. I carried an accordion up to the hotel.

Q. Uh-huh.

Q. (By Dr. Azordegan) You carried what?

A. An accordion up to the hotel. I had a lot of musical instruments in the back of my car.

Q. (By Dr. Azordegan) Any questions? Would you please repeat your name for me?

A. Ernest Triplett.

Q. (By Dr. Azordegan) An you—everything you tell us was—freely your talk with us without anybody push you?

A. I did.

Q. (By Dr. Azordegan) And you promise and you swear everything you tell us is true.

A. Yes.

Q. (By Dr. Azordegan) And you remember the date of today.

A. The date of today?

Q. (By Dr. Azordegan) Yeah.

A. Its getting pretty close to my birthday. I think it's around the 6th.

Q. (By Dr. Azordegan) Today was 6th.

Sixth day of October.

A. 6th of October.

[fol. 79] Q. (By Dr. Azordegan) What year?

A. 1954.

Q. (By Dr Azordegan) Thank you. Have you any questions?

Q. (By Harry Gibbons) What day is your birthday, Ernie?

A. 9th.

Q. That would be Saturday. Look at your calendar. Is Saturday up there the 9th of October? The calendar on the wall.

A. It does look that way.

Q. (By Harry Gibbons) Uh-huh. Have you any questions?

Q. (By Dr. Azordegan) Can you tell us the exact day you got in Sioux City?

A. I'd have to look that up on the record.

Q. (By Dr. Azordegan) What record you have?

A. In the police station, when I got pinched. I was pinched—I worked a week and half on Flood.

Q. (By Dr. Azordegan) Very Good. Can you tell me how many days after you killed the boy did the police arrest you? (Pause)

A. They picked me up on Wednesday.

Q. (By Dr. Azordegan) Wednesday, and how many days before that did you kill the boy?

A. That would be on a Tuesday evening.

Q. (By Dr. Azordegan) Tuesday evening. That means Tuesday—Wednesday they arrest you. On Tuesday night you killed the boy. What hour was it? What time was [fol. 80] that time?

A. I have no wrist watch—I wouldn't know.

Q. (By Dr. Azordegan) But it was night? And dark?

A. Yes.

Q. (By Dr. Azordegan) Thank you. Any questions? Any questions?

Q. (By Harry Gibbons) I think there was a little mistake in the months. You said September, Ernie, a while ago. I believe you meant August. Was that the record, Bill? You mentioned the month of September.

Q. (By Dr. Azordegan) Was it August or September?

A. Let's see, August, September, October. I believe it was September, wasn't it? This is October.

Q. Yeah.

Q. (By Harry Gibbons) It is October 6th today, Ernie, and you was arrested on the 2nd of September, and you came to Sioux City about three weeks before that, which would make it around—I believe you said before the 9th of August you came to Sioux City—is that about right?

A. Yes, it must be to that effect.

Q. (By Bill Sanguin) Ernie, what did you use after you hit him with your hand? Did you use any instrument—go back to the ca[illegible], get any tools, any tire wrench or anything like that and strike the boy again and make sure?

A. No.

[fol. 81] Q. (By Bill Sanguin) You just used your hand?

A. Uh-huh.

Q. (By Bill Sanguin) You must have hit his head or something like that of that order.

A. Uh-huh.

Q. (By Bill Sanguin) Because when you picked him up he was limp and you took him through the fence or took him through the fence and laid his body in the field. Is that right?

A. Yes.

Q. (By Dr. Azordegan) After you found the boy fell down you opened his pants, or before it was?

Q. (By Harry Gibbons) What did you and Jimmie talk about on the way out there, Ernie?

A. What did we talk about?

Q. Uh-huh, what did you talk about?

A. He tried to run away and where he was going and how he thought he could make it, and this and that.

Q. And when you drove him out to the country, Ernest, that's what you had in your mind, to have a little party with him?

A. Yes.

Q. You intended to—what—to commit an act of sodomy with him when you got out there?

A. I didn't know.

Q. I mean is that what you would have liked to have done when you got out there?

[fol. 82] Q. That is, you intended to insert your penis into his rectum or did you intend having him go down on you or you go down on him? (Pause), what did you intend to do, Ernie?

A. I didn't intend to do anything only go for a ride.

Q. I see, did you stop and park along the highway for a while, before you started playing with him?

A. Yes.

Q. Had you ever been on that road before, Ernie?

A. No.

Q. How did you get there from out on Military Road? How did you drive to go out there?

A. I can't possibly trace it, but I still know I got there all right.

A. Well, uh, I got away from there as soon as possible

Q. (By Dr. Azordegan) Uh-huh, that means escape. You escape from place?

A. Uh-huh.

Q. (By Dr. Azordegan) And you add later to anyone you killed someone, that's right?

A. Right.

Q. (By Dr. Azordegan) Good. Had you been in your mind completely this happen and you realize what you were going to do. As soon as you leave the place you realize you're going to escape from the murder?

[fol. 83] A. No, I didn't realize anything about the murder, I——

Q. (By Dr. Azordegan) How you escape if you don't realize? I have no other questions.

Q. (By Harry Gibbons) When did you first hear the little boy was dead, Ernie?

A. When you first took me out there.

Q. (By Harry Gibbons) You didn't read about it in the paper?

A. No.

Q. (By Harry Gibbons) And, was you out in the neighborhood the next day?

A. I was.

Q. (By Harry Gibbons) And did they tell you the boy was missing?

A. Yes.

Q. (By Harry Gibbons) And were you reasonable sure that the boy they were talking about as being missing was the one that got out of the car?

A. Well, naturally.

Q. (By Harry Gibbons) And—uh, but you didn't think he was dead.

A. No.

Q. (By Harry Gibbons) What did you think became of him?

A. I didn't konw.

Q. (By Harry Gibbons) Now, all the time back in Sioux City when you were being questioned about the murder of this boy, were you lying to the police officers there?

[fol. 84] A. I lied to them considerably.

Q. (By Harry Gibbons) Did you lie to them about your killing the Bremmers boy the Bremmers boy? Or you lying now? Pause) Can you answer that question, Ernie? (Pause)

Q. (By Dr. Azordegan) Would you please repeat this question?

Q. (By Harry Gibbons) I said when you were back in Sioux City in the Detective Bureau numerous times regarding the killing of the Bremmers boy you denied knowing anything about it. Is that right?

A. Nobody told me I killed the Bremmers boy. Nobody accused me of killing the Bremmers boy.

Q. (By Harry Gibbons) When you were asked about riding around in your car and where you took him, you lied about that? In Sioux City?

A. Yes.

Q. (By Harry Gibbons) And is the story that you're telling now here in the hospital to Lieutenant Dennison and myself and the members of the staff here and the members of the personnel of the Cherokee State Hospital—this is a true story you're telling now? This is the truth what you've been talking about now to the doctors, the assistants, Lieutenant Dennison and myself?

A. Yes.

Q. (By Harry Gibbons) It is?
A. Yes.
[fol. 85] Q. (By Harry Gibbons) That all.

Cross-examination.

The various questions in this examination of Mr. Triplett were by Dr. Azordegan, William Dennison, Mr. Gibbons and myself.

Q. You were there for the purpose of setting up the tape recording instrument, were you not?

A. No, it was my day in the Ward, sir, and it just happened to be one of those days. If the regular man would have been there, it would have been up to him, if he could have done it, but I happened to be there, so I got the job.

Q. Did you feel you had a duty to interrogate a patient there, in this examination, about his guilt concerning the commission of a crime?

A. I did not consult the superintendent. I consulted the assistant superintendent. I do not know whether or not, before Dr. Azordegan brought Ernest Triplett to this interview that was recorded, he administered certain drugs to him.

Q. Then, all the way through this interview, the hesitant and drawling voice in the interview, in answer to questions, was, at all times, the voice of Ernest Triplett, wasn't it?
[fol. 86] A. Yes.

Q. There has been some testimony in this case that Mr. Triplett, in his normal mind, is very alert and answers questions very quickly when they are asked him. Ordinarily, when you talked to him in connection with your duties there on other occasions, would he not answer promptly and alertly the questions you asked him?

A. He answered them the same way anybody else would, if he——

Q. Yes, all right, you were in charge of the Ward that Mr. Triplett was in as a patient at the time this interview was taken, were you not?

A. Of that day, yes.

(Witness excused.)

Mr. Tacy: If the Court please, the defense at this time renews the objection to the admission in evidence of the

tape recording just played in the presence and hearing of the jury and asks that the testimony so recorded be stricken from the record and withdrawn from the consideration of the jury, for the reason that it clearly appears that this was an inquisition and a cross-examination which could not be conducted in any Court of law, under the rules of evidence; that it appears from the recording, itself, that it was not the free and voluntary confession of the defendant, [fol. 87] Ernest Triplett, but that he was urged and cross-examined by four different persons especially the voice—pardon me—especially Dr. Azordegan, and was not allowed to tell said interrogators any connected, chronological story voluntarily. And, for all the reasons urged in the former objections to this alleged tape-recorded confession, the defendant objects to its admission.

And, for the further reason that, since the preliminary hearing before the Court on last Wednesday to determine whether this tape recorded interview should be submitted to the jury, there has been additional testimony by the witness, Marvin Lambert, a police officer that he held out an inducement to the defendant to make this confession; and that Marvin Lambert testified, in answer to this question: "And did you tell him that the—it would be better for him if he gave you all the facts and circumstances of this crime?" And, his answer, "Yes, sir." And according to the Storms case, that is sufficient to vitiate this confession, when it is admitted by the State.

The Court: Overruled.

HARRY J. GIBBONS, recalled for the State, testified:

[fol. 88] Further direct examination.

I am Harry Gibbons. I previously testified in this case. I was in the court room yesterday when the recording taken at Cherokee was played. The recording played before the jury is a full, complete and accurate reproduction of the recording taken at Cherokee and there have been no deletions or additions. I was present and overheard the entire conversation. Bill Sanguin's identification of the various voices was proper and correct.

Cross-examination.

I asked the questions of the defendant pertaining to sexual perversion.

Q. Who notified you, by 'phone or otherwise, to come to the mental hospital at Cherokee, Iowa, the day that you went down and secured this so-called confession on the tape recording machine?

A. The telephone conversation between Dr. Sainz and myself.

WILLIAM A. DENNISON, recalled for the State, testified:

Further direct examination.

[fol. 89] I am the William A. Dennison who previously testified in this case. I was present in the courtroom when the recording was played yesterday. The recording played to the jury is a full, complete and accurate reproduction of the interview had with Mr. Triplett at Cherokee, Iowa, on October 6, 1954. There have been no deletions or additions and the statements by Bill Sanguin as to the persons making the statements and his identification of voices was correct.

Cross-examination.

I understood most of the words that were played back on the tape recording. I thought I heard every word.

Redirect examination.

I have heard the recording played a great many times and have familiarized myself in detail with the conversations. I interviewed Mr. Triplett a number of times and had opportunity to learn his voice and manner of speaking. I did not notice anything different in his voice as disclosed by this recording than his normal tone of voice.

Recross-examination.

I noticed a difference between Triplett's voice and the voice of Dr. Azordegan who was cross-examining Mr. Trip-

[fol. 90] lett. Dr. Azordegan's examination was in a loud voice and in a foreign accent.

The State rests.

The defense rests.

MOTION FOR A DIRECTED VERDICT OF ACQUITTAL

Mr. Tacy: Comes now the defendant, at the close of the State's testimony, the State having presented its evidence and rested, and moves the Court for an order directing the jury to return a verdict of not guilty, dismissing the indictment upon which the defendant is being tried, and discharging the defendant from custody, for each and all of the following reasons:

1. That the record does not reveal competent evidence sufficient to warrant a submission of the case to the jury.

2. That the uncontradicted testimony of the State renders the purported confession and tape recording thereof and all purported admissions by the defendant inadmissible and not voluntarily made; that, apart from said purported confessions, the tape recording of the same, and the claimed admission there is no concrete evidence connecting the defendant with the commission of the crime.

3. That oral admissions, made out of court, without other independent evidence tending to prove the same facts, are [fol. 91] not sufficient to take the case to the jury.

4. That the fact that the defendant was at the scene of the crime or that he was seen in the company of Jimmie Bremmers on August 31, 1954, or at any other time has not been shown by any independent evidence, but only by oral confessions and admissions alleged to have been made out of Court; and that said oral admissions, confessions and the tape recording thereof is not sufficient to warrant the submission of the case to the jury without this concrete, independent evidence, aside from said admissions and confessions, tending to establish the same facts relied upon in the said admissions and confessions.

5. That the alleged oral admissions of the defendant, the alleged confessions of the defendant made on the 6th day of October, 1954, while the defendant was a committed patient in the Mental Health Hospital at Cherokee, Iowa,

after being held in police custody for 20 days without any charge being filed against him and subjected to questioning continuously during that period of time, are all without legal competency as evidence against the defendant. That to admit said alleged admissions, confessions and tape recording of said confession would constitute a violation of the rights of the defendant under the laws of Iowa, under Article 9, Section 1 of the Constitution of the State [fol. 92] of Iowa, under the 5th Amendment to the Constitution of the United States, and under Article 1, Section 1 of the 14th Amendment to the Constitution of the United States.

(The Motion For A Directed Verdict of Acquittal was overruled.)

DEFENDANT'S EVIDENCE

MRS. RAYMOND (MARY) FLOOD, on behalf of the defendant, was sworn, and testified:

Direct examination.

My name is Mrs. Raymond Flood, Mrs. Mary Flood. My husband and I operate a music studio in Sioux City, Iowa. We also give music lessons to children and adults. During the month of August, Mr. Ernest Triplett was employed as a solicitor for students for our studio, for about two and one-half weeks before August 31, 1954. He appeared to be a hard worker and contacted 20 or 30 homes per day. The number solicited by Mr. Triplett could easily reach over a hundred. As a result of his solicitation, we enrolled 18 new students. David Osborn's father brought David, an 8 year old boy in and enrolled him after Mr. Triplett was arrested.

[fol. 93] Q. Did he make any complaint to you then, or at any time, of ary improper conduct of Mr. Triplett toward his little boy, David.

A. No, he did not.

Mrs. Osborn, David's mother came in several times after Mr. Triplett was arrested and she never made any statement that Mr. Triplett acted in any unusual manner toward her little boy, David.

Mr. Triplett's attitude toward me and our music teacher and other women in the office was always that of a gentle-

man. He was very quiet and did not use profane language. Mr. Triplett was in our store on the evening of August 31, 1954 at about a quarter to 7 p.m. We left about 7:30, Mr. Triplett walked out the door with us. He just walked to the door with us. His car was parked near there.

Q. Did he come to work next morning as usual.

A. Yes, he did.

Q. Did you notice anything in his attitude as to whether he was excited or nervous about anything?

A. No, he acted as normal as he ever did.

Q. What clothes was he wearing the next morning, which would be September 1st; what clothes was he wearing when he came back to your store?

A. Well, he had on the same clothes he had worn Monday and Tuesday.

[fol. 94] He was wearing a pair of gray wash pants and a mustard yellow shirt. They were the same clothes he was wearing the night before. Mr. Flood had raised some question about Mr. Triplett wearing wash pants around the store and he did buy him some better clothes. Mr. Triplett went out to work as usual the next morning after August 31st, 1954. He came back later and said some body in the neighborhood told him a little boy had been lost and it wasn't a good idea to be working out there, so Mr. Flood told him to hang around the store. The next morning, September 2, 1954, Mr. White called Mr. Flood about 7:30 in the morning. When Mr. Triplett came to work the next morning I heard Mr. Flood communicate to Mr. Triplett that the police wanted to see him; that they wanted to talk to him in connection with this —being in the territory out there at the time this little boy disappeared.

Mr. Flood told him to wait at the store for the coming of the police.

Q. Well, about how long did Mr. Triplett wait for the police to come?

A. I think about four and a half hours.

Q. Did he appear to be nervous or excited while he waited four hours for the police?

A. No.

[fol. 95] I was interviewed from time to time by the police after Mr. Triplett was taken into custody. We knew very

little to help but we told all we knew. Mr. Dennison and Mr. Bucchino talked to me three or four times after that. Police Detective Bucchino said Triplett was the right fellow and he would see him hanged if it was the last thing he ever done.

Cross-examination.

We had no complaints about Mr. Triplett only we wished he would dress a little nicer. We had no complaints from others about him. No, I did not tell the police, nor hear Mr. Flood tell them that we had complaints about Mr. Triplett. Mr. Triplett came in and told us a little boy was missing and somebody told him it wasn't advisable to work out there. We asked him to stay in and he hung around the store that day. That was the day before Mr. White called us.

Raymond Flood, called for the defense, was sworn and testified:

Direct examination.

My name is Raymond Flood. I own the Flood Music Company where Mr. Ernest Triplett was employed as a solicitor on August 31, 1954. On the evening of August [fol. 96] 31, 1954, Mr. Triplett left our store about 7:20. We locked up and took our music teacher, Beverly Williams, home. Mr. Triplett was using a car I had bought about August 18, 1954. He usually parked it near the hotel right around the corner from the store. I bought the car from Merlin Inman. He has children in his family, one girl about 13 on August 31, 1954. Before selling the car to me he had been using the car himself. I did not have any children in the car before the police took it into custody. I used the car after the police turned it back to me. I used it on a hunting trips and had hunting dogs in the car before I turned the car back to the police at their request. I examined the car on the 2nd of September. My wife and the lady that works for us was there. I examined the bumpers and fenders to see if there had been an accident. I examined the interior

of the car with a flashlight and I saw no evidence of finger marks or anything of that kind.

I was in the store at times when Mr. and Mrs. Osborn came in with their little boy, David Osborn, who enrolled after Mr. Triplett had been arrested. They made no statement concerning any unusual action of Mr. Triplett toward their son, David. We had no complaints about Mr. Triplett at any time. We did not notice anything unusual in his manner or actions around women or children among studio customers and never heard him use any vile or obscene language or profanity.

[fol. 97] During breakfast on the morning of September 2, 1954, the 'phone rang and Mr. White, Assistant Chief of Police asked me about a salesman out in that general area where the boy was missing and I told him I did and that I would have him at the store where they could talk to him. He said they wanted to talk to him about the missing boy. I told Mr. Triplett about this when he came to the store that morning. He did not appear to be excited or nervous about it, but my wife and I were quite nervous. He waited at the store for the police from about 9:00 a.m. to 1:00 or 1:30 p.m. after lunch before the officers came. Mr. Dennison and Mr. Bucchino came and they questioned me and they took Mr. Triplett into custody. I told them all I knew, just as I have told it here.

Q. Now, Mr. Flood, when Mr. Triplett came to your studio on the morning of September 2, 1954, did you pay some attention to the clothing he was wearing?

A. Yes.

Q. What clothing did he have on?

A. He had on a pair of gray cotton wash trousers—they have an elastic waist band rather than a belt—and a light shirt, kind of a mustard color yellow.

Q. That was the same clothing he had on the night before when he was at your studio?

A. Well, yes.

[fol. 98] Q. Had he been wearing that clothing, as your wife testified here, for a couple of days?

A. That was the fourth day.

He said he didn't have any other clean clothes and I got him a pair of slacks and a shirt at Sadoff's so he would look better around the studio. Ordinarily, he was

out on the territory, but he was waiting around the studio for the call from the police. He changed at the hotel and left the clothes he was wearing in his room at the hotel. After that, Mrs. Greenlee, who owns the hotel, and I went up to his hotel room and the pants and shirt were laying over a chair and I took it up and looked it over. There were no spots, discolorations or blood on his clothing which he had taken off. Mrs. Greenlee, proprietor and owner of the hotel, took charge of his clothing. They were not sent to the laundry.

I had some conversations with Mr. William Dennison about Mr. Triplett and he said he could get Mr. Triplett to tell him anything. Said he was a "funny fellow" and would talk about anything under the sun you wanted him to. But, he said he couldn't get anything out of him about the Bremmers boy. Mr. Dennison and Tony Bucchino came to my store a good many times to talk this story over again. I said I didn't see how I could help them. They wanted me to come to the station and I did so. [fol. 99] We were there a couple of hours. Mr. Dennison kept telling me if I would cooperate with them it would be better for me and might be embarrassing if I didn't and I asked him, "What do you mean," and he said "Like in your business." I said I couldn't see what difference that would make.

Detective Bucchino was not as tactful as Mr. Dennison and I asked him not to talk to me the way he was. Mr. Dennison sort of looked at him to simmer him down; and he got mad, hit the table with his fist and said he'd hang that S. O. B. before he was through.

Q. When he hit the table with his fist, was he angry about your not being able to tell him any more?

A. Well, I guess so, or frustrated.

Cross-examination.

I hired Mr. Triplett after he hung around all day. He didn't have much money to speak of and not too many clothes, but he offered to work on a commission and I found he had music experience. I didn't want to hire him, but I thought I had nothing to lose, as he worked on commission. I inquired about his past employment. No, he did not tell me he had been on the bum for several months.

I bought a car for his use about the 17th or 18th of August. [fol. 100] I had no complaints about Mr. Triplett's drinking. One called in but it was a case of mistaken identity. I don't recall any complaint from Mrs. Albert J. DeBosford that Mr. Triplett had chased her little girl around the house. No, I had no complaint from Homer, Nebraska, that Mr. Triplett was in the house with a 4 or 5 year old girl without the presence of the mother. That's the first I heard of that. I may have mentioned to police officers, Dennison and Bucchino, that I was concerned about the effect the arrest to Mr. Triplett might have on my business. I don't recall asking if the Bremmers would be in position to sue me if it was ascertained that Mr. Triplett was guilty of murdering their son. I do not recall telling Chief White when he called me that I had received complaints about Mr. Triplett.

No, I did not ask Mrs Greenlee to provide an alibi for Mr. Triplett for that evening before from 8:00 to 9:00 o'clock. It was several days later that I went to Mr. Triplett's room, not the day he was arrested. I did not tell the officers that a steel piece about the size of a shot gun shell was missing. They come and asked me and I told them that as far as I could determine, it wasn't. I examined the car at my house that night. The trunk apparently, had not been opened. It was all dust in there.

[fol. 101] Dorothy Greenlee, called for the defense, was sworn and testified:

Direct examination.

During the month of August, I was operating the Bus Hotel in Sioux City, Iowa. Mr. Ernest Triplett had a room there. I understood he was employed by the Flood Music Studio. He sat and watched two TV programs either Monday or Tuesday night. One was the "Robert Montgomery Presents". It was on Tuesday night, yes.

Q. Now, I will ask you this: Now, when Mr. Triplett left some clothes in your hotel, in his room, and he was later taken into custody by the police, will you tell the jury whether you ever saw the wash pants and shirt he was wearing left there in his room.

A. Yes, I did.

They were just soiled clothes, that's all. We saw nothing else on the clothes. They were on the back of the chair. We did not sent them to the laundry. The police picked them up.

ERNEST TRIPLETT, called as a witness in his own behalf, [fol. 102] was sworn and testified:

Direct examination.

My name is Ernest Triplett. I was living at the Bus Hotel when I was taken into custody. Since September 2, 1954, I have been in jail at police headquarters or at Cherokee. Sometime before August 31, 1954, I was employed as a salesman to solicit music students for the Flood Music Company. Among others, I solicited a family named Osborn and a family named Meisch here in Sioux City.

Q. Do you recall the incident which was testified to by a little boy here, David Osborn? Did you hear that testimony?

A. I did.

Q. All right. Now tell the jury whether you remember doing anything like taking hold of the hand or wrist of David Osborn on the occasion that he testified to you did. Do you remember doing anything like that?

A. I didn't do it and I don't remember doing it, and I wouldn't even think of doing it; and what would be the occasion to do it is more than I know.

Mrs. Osborn was in the garden when I called on her that evening; and we were waiting on the porch for her to come up and she finally came up out of the garden [fol. 103] with a basket of tomatoes. She was only a short distance away and coming towards us when I talked to the little boy on the porch. She knew I was there on the porch and she had her basket loaded with tomatoes. She made no complaint to me at the time that I had put my hand on David's wrist, or anything like that.

The testimony of Mr. and Mrs. Flood and Beverly Williams that I was down there with them until about 7:20

p.m. on August 31, 1954 are true. They parted company with me at the door and I went where I had my car parked. I drove to the Osborn address and couldn't place the house and I drove over the hill and down the road trying to get some people that might be home so I could inquire where they lived. I went to Meis[illegible]'s home for I knew where they lived. I came from Meisch's home to Osborn's home. Then I drove back to town. I couldn't find a place to park my car, so I had to park it by the Park Hotel and walk over to the hotel with my accordion. I got in on the tail end of the program that comes on just before Liberace, the piano player came on.

Except for the interval when I got my car from a Park Hotel and parked it around by the Bus Hotel, I was up in my room and went to bed. The clothing that I wore the night of August 1, 1954 was blue trousers and a mustard colored shirt.

[fol. 104] Q. What clothing did you wear when you went into the Flood Music Store the next morning after August 31, 1954?

A. I had the same clothes on. I didn't have no change. Maybe I could change a shirt, if I wanted to, but I didn't.

Q. Now, did you go out the next morning for the Flood Music Co. as usual?

A. I did.

Q. Did you go into the neighborhood some where near the Bremmers home?

A. Yes.

There was a party there that I have reference to that told me about a boy missing and what the address of this home is I can't tell you, but Mr. Gibbons and I talked to that woman. The party said "There's a boy missing". I quit at noon and came in. There was quite a bit of commotion out there. The man pointed to a house and said, "Where all them cars is, the boy's missing". I didn't know where the Bremmers lived, so I just supposed that would have been the house. I remember when I came to work the second of September Mr. Flood told me that the police wanted to question me about this Bremmer boy. I waited for them about four hours. I was calm while I waited for them. I didn't have no reason not to be calm. Tony Bucchino and Bill Dennison talked to me and took

me into custody. Before the police came, Mr. Flood told [fol. 105] me I should be dressed a little better as I would be around the studio for some time. He went to the store and got me a pair of slacks and a shirt. I believe he didn't want me around there in them kind of clothes. I went up to my room and changed and left the clothes that I was wearing on the night of August 31, 1954 in my room.

I was questioned by the police after I was taken into custody, but nothing about the missing boy the first two days. They finally got into it and produced a light complexioned blonde woman that claimed to have seen the Bremmers boy in my car.

Q. She hasn't been a witness in this case, has she?

A. No, they didn't never get her on the stand yet.

I asked if I couldn't get her on the witness stand and cross-examine her. After this they questioned me whether I had him in my car. The police were trying to put him in my car.

Well, I knew I wasn't guilty and I didn't think they could prove it; and I can't prove an innocent man guilty if he ain't guilty; so I let them go ahead.

Q. You listened to their accusations without making a reply, didn't you, many times?

A. Yes, I hold my temper pretty good.

[fol. 106] Q. There has been some testimony here about your personal habits—smoking marijuana and unnatural sex practices. State whether you told the police any of those things that they say you have told them.

A. Well I went along with them to a certain extent, but as far as smoking marijuana and practicing—what did you call that now?

Q. I said unnatural sex practices.

A. That I didn't do.

I was accused of these practices by the police and grilled everyday for two straight days.

Q. You say, you were grilled everyday for two days straight?

A. That's right "You did do it."

Q. And state whether you repeatedly denied those things.

A. I did up to a certain extent; and I got tired of their filthy conversation and thought we might be able to get

into something else. So I think there was something there that I said that they kind of went for some other subject the next day.

I thought this filthy talk had gone on long enough and I ceased to deny and make any statement concerning it. I just let them talk.

[fol. 107] I recall a conversation that I had with a gentleman by the name of Joe Matousek, who testified here this forenoon, when he came in to interview you.

A. I did.

I remember he questioned me about the Bremmers boy and asked me to confess the crime to him.

Q. What did he say?

A. Well, he said he would get me an attorney and help me out, and the best I would get out of it would be Cherokee. I told him I wasn't guilty. He didn't believe it. He says, "You might as well come on and tell me, and I'll get you an attorney" and he would get me out of it with a little time over in Cherokee.

Q. You asked him to—tell the Jury what you asked him to do?

A. I said if you know how it was done, tell me, then I'll confess.

Q. I believe as a part of your so-called confession—which we will get to later—which was made down in Cherokee, in response to a question as to some of the facts of this boy being in your car, you stated that the police had been trying to get you to say that for three weeks. Do you remember that statement?

[fol. 108] A. That is true.

That is the period that I referred to in the tape recording as the time when they were trying to get me to say that I had the boy in my car. They took their time at it, because they wasn't going to let me out and they wasn't in no hurry.

Q. I see. There was some testimony here that you were probably interviewed a part of each day, or at least 20 times in the twenty days is that about right?

A. Well, I couldn't give you the numerous times it was, as to the fact of it, but it was quite a few.

Some of the questioning took place in the nighttime. I would say it would be around from 2:30 on into the morning.

Q. Were you aroused from your bed for these interviews.

A. Yes I was.

The questioning would last until the shifts would come on into the morning and I would go back up for coffee and come down again. Different persons interviewed me at different times. There was one man that has never been brought into this as a witness for the State that was a big wrestler and somebody you might be afaid of and if you [fol. 109] was guilty you would probably be afraid of him and only one thing you could do, take what he would give you, if he wanted to give it to you, for he was that big. I don't hardly like to bring that into the jury here what it might have turned out that he said, but he was threatening, if I didn't tell the truth, he would kick the so and so out of me. I didn't like him to question me. I didn't want to get beat up or nothing like that, but the other boys down there were very nice to me. This was before the tape recording was made down at Cherokee.

Q. Just tell the jury what you told the officers when they questioned you about this case?

A. Well, I asked these officers if they would tell me how that the Bremmers boy got killed that I might be able to—how was that?—Testify as to that.

Q. You still were maintaining that you were not guilty, when you made that statement, were you?

A. That's correct.

Q. When you were taken down to Cherokee the second time and a tape recording was made of an interview with you down there, will you state whether or not you had any former conversations with the one who questioned you there—Dr. Azordegan.

A. Yes, yes I had several interviews with that boy.

[fol. 110] Q. Why do you say that boy?

A. Well he was talking to me everyday.

Q. Just tell the jury some of the things he said to you.

A. Well, he said, "You are in here for being crazy, you are going to be in here for the rest of your life". And he said to me that there wasn't no way out for me, and he said that he believed it would help me out if I plead guilty to it.

So I went around and got to him and I said how did the boy get killed and can you tell how the boy got killed. I believe he talked to me about some unnatural sex practices.

I believe he did. But him and his talking and that medicine, I haven't got caught up on my Dr. yet and I don't know all about the medicine and I couldn't very well explain the words that he brought in there, not knowing the meaning of them. I don't think that he mentioned that I was guilty, but he said "I am going to help you out if you plead Guilty".

I believe that I was taking different kinds of medicine down there. I got on quite a few drunks. I don't know the medicine—but I got it. He said it would help me out and he would get me finally on a job over there, and that I wouldn't be in there any more than about two years. And I thought, "Well, if he knows what he's talking about I'll let him help me out". And so I'm down here in front of you today.

[fol. 111] Q. You said something about feeling peculiar or like you were drunk several times.

A. Yes, I did.

Q. How were you feeling at the time this interview was taken as to whether you were clear headed or not at the time this interview was taken? I call your attention to the character of your voice, your drawling words, and so forth, and ask you if you can explain to the jury why your voice on that recording is different than it is here in the courtroom. How do you account for that?

A. I cannot give too good an account for it; but I did notice it on that tape recorder, by the deeper sleepy voice, and I did notice there was something wrong in particular with it, but I can't give you a definite explanation on it.

Q. Well, how did you feel during that record, did you feel sleepy?

A. Well, I didn't feel natural that I grant you.

Q. Did you have a real clear understanding of what was going on?

A. No, I couldn't get Dr. Azordegan's story down very good, so I couldn't give a good account of pleading guilty of killing the Bremmers boy.

Q. You say, you couldn't get Dr. Azordegan's story down very good. Had you gone over the story with him before [fol. 112] you went in to take the interview on the tape recording?

A. Oh, yes, definitely so.

Q. Had he planned it with you what you were going to say?

A. He told me exactly what to say, and I never changed it.

I told him I was not guilty but I said that I would let him go ahead with story and see how it worked out. I didn't know how the boy was killed and he didn't either so it looked like to me a great big fairy story there. I couldn't put it together, and I don't believe he could either. In the tape recording I tried what I and Dr. Azordegan had gone over together before I had this tape recording taken. This interview did not appear real to me, it was very subnormal.

Q. You are not in that condition now, are you?

A. Absolutely not.

Q. Now, Mr. Triplett I am going to ask you after listening to that tape recording whether the statements connecting you in any way with the death of Jimmy Bremmer are false statements.

A. Why no they are false. I mean that's all there just false. I never killed the kid.

Q. And you now repudiate the whole confession which was played on the tape recording before the jury?

[fol. 113] A. I absolutely do.

Q. Now, in spite of what some of the police have testified to, did you know Jimmy Bremmers.

A. No, I never did know the kid. I seen his picture down at the Police Station and thought it might have been the kid playing in the Meisch's yard with the girls when I drove in there, that's all.

The statements the police claim I made that Jimmy Bremmers was in my car that night are false, they tried to put him in my car. I let them put him on my fender and they finally made it to the car door but that is not true he never was in that car. Tony Bucchino said if they couldn't prove me guilty they would set me free. Just before that I mentioned to Tony that I was through messing around with them; I wanted them to give me—what do you call them—Truth detector or something, and I told him if he thought me guilty to try and prove it that was his job.

Q. Did you ask to be taken into court and have a hearing?

A. I thought they would come to that, but they were

definitely stuck on keeping me there, but a lack of funds, you can't very well bring it into court because there was no charges.

[fol. 114] I intended after I accumulated some money to go to the West coast I have a brother out there who is a preacher and I expected to make my home out there again.

Q. Now there is some testimony here that you were taken out to the scene where the boy's body was found some time after it was discovered do you remember that?

A. Yes, I remember that.

The police had not asked me to give any information as to where the boy's body was and I didn't direct them on the trip out there. They took me. There was some guy's up there taking pictures and looking over there. The Dr. gave me a shot of medicine before we left the hospital.

Q. I see. You were feeling stimulated then weren't you?

A. I couldn't talk to Gibbons; I couldn't talk to nobody. He'd ask me a question and I'd get about two words out of my mouth then I'd forget it all of a sudden; I couldn't remember. That's the way I felt on the trip out there. When I went up there to look over the bank my attention was attracted by certain photographers up there.

Q. Did you have any knowledge at all where this boy's body was at any time?

A. No, I turned around and asked Gibbons "What the matter with this outfit out here, what are they looking at [fol. 115] and Gibbons says, "Well you ought to know" and I think that's all he said.

Q. Do you remember in this tape recording, Mr. Gibbons ask you if you had intentions to commit an act of sodomy on this boy; did you understand what that question meant?

A. I didn't never look it up but I had an idea as to that word sodomy. I didn't——

Q. You didn't know what the word meant?

A. No.

Q. I believe then that Mr. Gibbons became more specific, and—without repeating any of the words that were used in the confession—he began describing to you what the crime of sodomy would be like, did he not?

A. I think he did, yes.

Q. And from the tape recording when he asked you if you intended to do those unmentionable things which had

been suggested by Mr. Gibbons, the tape recording shows that you answered "no", and is the truth?

A. Yes that's the truth.

This tape recording was a series of questions and answers —the questions propounded by Dr. Azordegan, namely.

Q. You didn't make any voluntary statements there coming from your own mind did you?

A. No.

[fol. 116] I was in a dazed or hazy condition and in answering the questions I did not realize the importance of them. All of the questions in this statement, connecting me in any way with the death of the Bremmer boy are false.

Q. And you say that you and Dr. Azordegan agreed upon what you were going to say when you went into this tape recording?

A. Yes, he told me what to say. I didn't—I didn't—I couldn't—I mean I didn't know how the boy was killed: I mean he seemed to know all about it.

The things said in that tape recording or admitted about any unnatural sex habits was something that the Dr. and I agreed on before we went in there. I didn't even know that they had a tape recording. I could beat them out easy without a tape recorder. When Sanguin asked me if when the boy got out of the car I didn't grab a rock or something in my hand I answered no. I was not the one that suggested a rock or anything of that kind.

Q. You didn't say there that you sent the clothes to the laundry that you had on the night of August 31, 1954 did you?

A. That's right.

Q. And you didn't send them to the laundry did you?

A. No.

[fol. 117] Bill Dennison has the clothes now. Dr. Azordegan was the man who talked in the loud voice and used the foreign accent. He was an Austrian and German I think. You couldn't understand—Sometimes you couldn't understand him at all. He talks in a loud voice.

Q. Will you state whether or not, as a result of these questionings for some twenty days in the police station you allowed, as you say to just let them talk, and didn't deny anything?

A. That's all you could do. There was no use denying nothing, you would tell them; they would turn right around and shove it back in your mouth.

I'm human and I can stand only so much and I imagine I needed a rest, I sure did about the time I went down to Cherokee. I was sleeping on the steel for a long time in the city jail. Mr. Gibbons gave me one of them mattress' finally but I slept on a steel mesh for a good length of time.

Q. Well, just tell the jury how you felt in your nervous and your physical system at the end of this twenty days of grilling.

A. Well, when you go through all that kind of stuff—and besides that, I had the F.B.I. down my neck a couple times, and on top of that grilled day in and day out, with [fol. 118] a bunch of them guys, I imagine it would be getting pretty tiresome when you get it all figured out how long it run.

Officers came here from the State of Maine and questioned me and tried to hang about two murders on me up there one day besides the one we've got here on our hands.

Q. You don't feel that they've hung anything on you as you say?

A. Well, I don't believe—they're not magical men; and I don't think they can stick an innocent party with a crime he hasn't committed and I didn't—I don't believe that's right—the average citizen; I don't believe he's smart enough to do that.

Cross-examination.

By Mr. Sturgess:

I was born in Woodbine, Iowa, October 9, 1904. I think. I went to the eight grade in school. I don't remember a Buster Dubois.

(Objected to for the reason that it is cross-examination of the defendant on subjects not brought out on direct examination.)

[fol. 119] (Overruled.)

I don't remember about a sister-in-law, Paula Triplett. There were eleven of us in the family and I got so many sister-in-laws, I hardly know all of them and I think there

was no Pauline in the family. No, I do not have a brother named Paul.

Q. Do you know a Captain Green, in Omaha?

(Objected to as incompetent, irrelevant and immaterial.)

Mr. Sturges: Your Honor, I feel that the matters which are being brought up now are certainly of a serious nature, and that——

Mr. Tacy: I move to strike the comment of counsel that the matters he is about to elicit from the witness are of a serious nature, and ask that the jury be admonished not to give any weight to that.

The Court: Sustained, and they are so admonished.

I had a lot of conversations with Mr. Dennison and Mr. Bucchino. I might have told them I had an act of perversion with Buster Dubois. I don't remember it. I told them a lot of things. Yes, I was married to Doris Spencer. [fol. 120] Q. Mr. Triplett, on the same day and during the same conversation, to which I have referred, herein, would you state whether or not you told the police that Doris Spencer was a prostitute?

(Objected to——

Objection Sustained.

That is my signature on Exhibits Q to Q-7, inclusive. I wasn't under oath when I put my signature on there, though. I would like to read those over I don't know how much you have got in there. I claim my constitutional rights not to answer those questions.

The Court: The objection, under the state of the record, is sustained.

Mr. Tacy: If the Court please, the defense counsel wishes to state on Constitutional grounds, refuses to answer slanderous questions, he may do so on the ground that it might tend to expose to public ignomy; and he has chosen to exercise those rights.

I left the Flood Music Store on the night of August 1, 1954 about 6:30 or 7:00. Bill Dennison has got it at 8:00 that I arrived at the Osborn residence and I'll go along with that story, but I believe it was around 7:30. I missed

[fol. 121] the Osborn residence and drove over the hill. I turned around to come back and went over to the Meischs' house. I parked in their yard and had to back out of the yard and go to the Osborn's but I drove down to that Grocery store and turned around and come back up the same street and hit the Osborn's coming back. I was at Osborn's about 5 or 6 minutes. And then went back to the Flood Music Store. When I got the car parked it was about 8:00. They were closing up the store and I went from there right on up to the room. I came down after this and parked my car back in front of the Bus Hotel. So I could unload the rest of the musical instruments. I imagine it was around 15 minutes of 9:00 but I don't exactly know. I can't give you a full version of the time because I ain't going by time out there. When I get my business done my time is my own so I don't look around at the clock. I went out to work the next morning in the vicinity of the Bremmers home. I talked to a man out there who told me that he had just put a new engine in his car and said he couldn't afford for his children to take music lessons. He told me about the boy being missing. That was my first knowledge of it. At that time I did not know where the Bremmers lived. I did not direct the police to the Bremmers home. They knew where the Bremmers lived and they directed me up there.

[fol. 122] At the time I had one pair of trousers and I believe I had two shirts, or three. Mr. Flood told me that a boy was missing and the police wanted to see me. I gave him the keys to the Plymouth car I had been driving. Mr. Flood asked me where I was last night and I told him I was at the Hotel looking at television. Mr. Flood bought me some clothes about 10:30 or 11:00 the forenoon the police wanted to talk to me. He wanted me to dress up a little. Mr. Flood had bought me other clothes from time to time. He also gave me some of his clothes. I never at any time told the police that I had the Bremmers boy in my car. I don't recall telling the police of being at the Osborn home. I got my information from Mr. Flood to come down there and be questioned, there is a missing boy. I and Bucchino got together in the back room there and he was asking me about that. I drove somewhere on Casselman St., but not being acquainted with the streets I couldn't give him a

direct answer. I was only two weeks in Sioux City and trying to find my way around yet. I can't tell you one street from another.

Q. You can't remember much of anything you told the police then?

A. That's right. I'm denying everything I told the police now if you want to get the truth of it that's it.

Q. Now are you lying now or when you talked to the police?

[fol. 123] A. I'm sworn in here. You ain't going to get me for perjury.

Q. Do you know what the Bremmers boy looked like, Mr. Triplett?

A. They showed me a picture of him down at the police station; that's all I know.

Q. Mr. Triplett I'll ask if Mr. Stanley Corbett talked to you and asked you if you wanted a lawyer.

A. Is that—was that guy a lawyer. You mean, the guy—I don't know you people. I mean I don't know what you are talking about. You mention a name to me, it's——

Q. Mr. Triplett, do you recall that morning about Oct. 4, 1954, a man coming to you and telling you that he was president of the Sioux City Bar Association, and asking you if you wanted an attorney?

A. Yes, I do remember that.

Right then and there I was trying to prove to the detective force that I wasn't guilty and I figured they would turn me loose; but they made a steady customer out of me. He said if I wanted an attorney he would get me one but Mr. Gibbons said it would not be nice for me to get out on the street and let the public get hold of me, because he said "What they won't do to you". So I didn't have no where to go; I might as well stay and fight it out with them.

[fol. 124] Q. So you stayed there willing? You say you didn't have any place to go.

A. Well, you can call it willing if you want to lay it on that way, but I wouldn't call it very willing, but I didn't want to run away and let them think I was trying to run away from a crime they accused me of that I didn't do.

Q. Did you not request to go to the Cherokee Mental Hospital?

A. The request was made through Mr. Gibbons. "I'll let you write the letter," he says "can you write or is your arm cramped this morning—and I'll tell you what to put in that letter." He says, "you put it in there"—so—so—"at your own request." Signed. Would you call that your own request or would you call it the request of Mr. Gibbons?

Q. Did you want to go to Cherokee?

A. Do I want to lay in a good bed or lay on the steel?

Q. Would you state whether or not you told this gentlemen who, on Oct. 4, asked you if you wanted an attorney, about whom you've testified before,——

A. Corbett?

I don't remember telling him anything like that.

Q. Mr. Triplett, you have testified previously today that you repudiate the tape recording that has been introduced in [fol. 125] evidence, and you state that the statements in the tape are false.

A. That is correct.

Q. Are all the statements in this tape false.

A. Absolutely.

I've got myself in a courtroom anyway on account of that; they didn't bury me over in Cherokee for the rest of my life.

Q. Mr. Triplett, in your prior testimony you stated at the time you were taken to the scene where the boy Jimmy Bremmers was found that you saw certain individuals at that scene.

A. I did.

Q. Would you state how many.

A. Well they were taking a picture down the road aways and then there was one man standing about right straight pretty near across from the car looking over the fence, by a fence post there; and I think there were two or three individuals outside of that out there; them people I was with.

Q. Do you recall where they were standing?

A. Not necessarily, my attention was drawn—the fact of the matter is—that the man was standing looking over the fence, and I wondered what he was looking at there and I saw a man down the line there taking pictures.

[fol. 126] I don't think there as any body out in the field; that is, down around to where the canvas was hung up down

there or something was laying down there; and I learned later that was where the body was laying.

Q. Isn't it true that a tape recording was made on Oct. 6th?

A. I couldn't state to you truthfully that it was not.

I would like to answer you there but I can't very well get that—everything connected into the days and dates, because I can't make a straight answer on that. I don't know whether I was there a week or a week and a half before the tape recording was made.

Q. Mr. Triplett do you recall how long you had been in Cherokee before the tape recording was made? Do you remember how many days you had been there the second time?

A. I don't believe it had been too long.

Q. Was it the same day?

A. Oh, no.

Q. Would it have been a week?

A. Yes, a week, or a week and a half or two weeks or something like that.

JOSEPH MATOSEK, called as a witness for the defendant, was sworn and testified:

[fol. 127] Direct examination.

My name is Joseph Matosek. I've lived in Sioux City for about 27 years. Since 1940 or 41 I've been engaged in operating a Private Detective Agency and had experience in investigating both civil and criminal cases in Iowa and other states. I heard of the disappearance of Jimmy Bremmers boy same day he disappeared the 31st of August 1954. I took part in searching for him. I carry a card as a Special Deputy Sheriff of Woodbury County, Iowa but I was not representing the Sheriff's office or any other law enforcement officer at the time I started this investigation. I recall having an interview with Mr. Triplett in the jail in Sioux City, Iowa and I think it was the second Sunday following August 31, 1954.

Q. State whether or not you were allowed by officers in charge of Mr. Triplett to go in and interview him.

A. Yes, I was.

I asked Mr. Triplett in that interview if he had killed the Bremmers boy. Well, on this particular day that I interviewed Mr. Triplett, I had come to the Detective Bureau to discuss certain portions of the investigation with Lt. Warnstadt. He was interviewing Mr. Triplett. I asked him how he was coming along and he said, "No good." I said, "How about me taking a try at it" and [fol. 128] he said go ahead.

Q. And were you then permitted by Officer Warnstadt to go in and carry on the interrogation of Mr. Triplett.

A. Yes, I was.

I was in the Detective Bureau for an hour and a half or two hours and I was questioning Mr. Triplett most of that time. He told me that he wanted to be cooperative with the Police Department.

Q. Will you tell what Mr. Triplett said to you about the commission of this crime, if he said anything to you about it.

A. He told that he knew nothing about the murder of the boy, or the disappearance, or whatever the case might be, but if I would tell him how it happened he would admit that he did whatever they wanted him to admit.

I told him it shouldn't be necessary for me to tell him how it was done; that if he did he should know it.

Q. State whether or not he still maintained that he did not commit the crime.

A. He still maintained that he did not commit the crime.

Q. What did you tell Mr. Triplett if anything, would happen to him if he confessed?

[fol. 129] A. I believe that I mentioned to him that due to his apparent mental condition—at least, I thought he had one—that probably the worst that would happen to him would be that he would be sent to Cherokee for two or three years for adjustments.

I believe that the time I told him that if he would tell me the story I would get him an attorney.

Q. Now, Mr. Matosek, from your experience extending over a period of some 17 years of interrogating persons suspected of crime, did you feel or did you not feel at the close of this interview, that Mr. Triplett had told you all that he knew about this crime?

A. I frankly felt that he had.

I felt that if he knew more about it I would ordinarily have been able to get some admission of some kind. I recall receiving a telephone conversation at my office from Mr. Triplett's counsel, Thomas O. Tacy, asking me to investigate the Bremmers case to try to find out who committed the crime. I was told in this conversation that my services were desired not only to defend Mr. Triplett but to try to determine whether some other person committed the crime. I'm still carrying on that investigation [fol. 130] with the help of another investigator. I felt further investigation would be a proper and necessary thing.

In connection with my investigation out of the case I had a talk with a man named Dowty who lived near the Bremmers home. I talked with him several times. I also talked with Mrs. Dowty. I took a statement from Mrs. Dowty to the effect that there was trouble between the members of her family and the Bremmers family. I took an affidavit to that effect. I also took Mr. Dowty's affidavit to that effect.

Cross-examination.

During the time I have worked on this case I have had a number of candidates. I had some youngsters that I was investigating and I checked them out with Lt. Warnstadt. That investigation is still continuing. I have done some work with Mr. Roberg and other detectives who was employed by Mr. Tacy just in the last two weeks.

I am still employed on behalf of Mr. Triplett. When I accepted the employment I was unsure of what the complete investigation might develop. I told Mr Tacy in the Martin Hotel that if it developed through my investigation that Mr. Triplett was definitely the person I could in no way give help to him.

(The defense rests.)

[fol. 131] MOTION TO STRIKE, ETC.

The defendant moves the Court to strike from the record and withdraw from the consideration of the jury the evidence of any oral admissions made by the defendant out of court to police officers for the reason that said oral

admissions are not corroborated by any concrete, independent evidence tending to establish the proof of those admissions; that the claimed admissions made to the officers in oral conversation with the defendant and claimed to have been made by him are not sufficient to establish any element of the crime or to be submitted to the jury; that the written statement purported to have been signed by the defendant—the same being Exhibit Q, Q-1, Q-2, Q-3, Q-4, Q-5, Q-6 and Q-7—is not admissible in evidence, as no proper foundation was laid for its admission; that the separate questions involved in said exhibit, consisting of several pages, were not read to the defendant when he was on the witness stand; nor was he interrogated, as to each question, whether he signed the exhibit with that question incorporated in it; and that there was no proper foundation laid for the introduction in evidence of Exhibit Q, Q-1, Q-2, Q-3, Q-4, Q-5, Q-6, Q-7. The defendant moves the Court, specifically, to withdraw from the consideration of the jury and strike from the record the said exhibit for the reasons stated.

[fol. 132] The defendant moves the Court to strike said exhibit from the record for the reason that the same is shown not to have been a free and voluntary confession of the defendant, but was a cross-examination of him by officers having him in charge, while he was being illegally held in custody of the law and in violation of Section 758.1 of the Code of Iowa, which requires an officer to take an arrested person before a magistrate without unnecessary delay. That to admit this exhibit in evidence would be to violate the constitutional rights of the defendant, under the laws of Iowa and the Constitution of Iowa and the Constitution of the United States.

Fourth: The defendant moves the Court to strike from the record and to withdraw from the consideration of the jury the purported oral confession which has been introduced in evidence by the State and made on October 6th, 1954, in the State Mental Health Hospital, at Cherokee, Iowa, at a time when the defendant had been admitted, under order of the insane commission of Woodbury County, Iowa, for observation and examination or treatment in the screening center of said hospital, and before there was any adjudication one way or the other as to

the mental condition of the defendant. That at the time said oral admissions were made, the defendant was still being observed and examined as to his mental condition. There is nothing in the record to show that he was found [fol. 133] to be sane at the time the said purported oral confession was made. The record shows that it was in February, 1955, when the final determination as to the sanity or insanity of the defendant was made by the staff of physicians at the Mental Health Institute at Cherokee, Iowa.

In support of his motion to withdraw this oral confession from the jury, the defendant further states that the testimony of said confession was in the nature of an extended and grueling cross-examination of this defendant and was not any spontaneous statement coming from the mind of the defendant himself; and that the said oral confession made prior to the tape recording on October 6th, 1954, is incompetent because it was not voluntary. And the Court has sufficient evidence of that to find as a matter of law, that it was not voluntary.

Fifth: The defendant moves the Court to strike from the record and withdraw from the consideration of the jury the tape recording of the confession of the defendant made on October 6th, 1954, while he was a patient in the screening center of said hospital, under order of the insane commission of Woodbury County, Iowa, and at a time when the question of sanity or insanity had not been determined. The fact that a determination was made on February 14th, 1955, that the defendant at that time was sane in no way affects his condition on the 6th of October, 1954. That the said confession is involuntary because [fol. 134] the tape recording shows that there was no statement in the recording made by the defendant that he was then making a free and voluntary confession; and if the same had been made, the evidence shows that the whole confession was not free and voluntary, but the result of a very searching cross-examination of the defendant by a Dr. Azordegan, whose duty it was to have charge of the defendant at that time, and by Bill Sanguin, who was an attendant and had the defendant in charge in the ward the defendant then occupied; and that said confession is the result of a searching and continuous cross-examina-

tion, and shows upon its face that the defendant was in a condition such that the said confession—the tape recording of said confession shows that the examining doctor asked the defendant if he knew his own name; and from the recording—which the Court heard, or we hope he heard—the defendant appeared to be not in his normal state of mind. The tone of his voice and the drawl of his words indicated that.

Mr. Tacy: The defendant moves the Court to withdraw from the evidence and consideration of the jury the exhibits showing the dead body of the boy, Jimmy Bremmers—off the record now.

(Discussion off the record.)

Mr. Tacy: (Continuing—State's Exhibits F, C, and J. [fol. 135] The defendant asks that these exhibits be withdrawn from the consideration of the jury for the reason that they do not tend to prove any disputed question of fact in this case and are, therefore, not material; and for the further reason that said exhibits are of an exceedingly inflammatory nature, if shown to the jury; that the damage to the defendant of the inflammatory character of these exhibits far outweighs any materiality of the pictures to prove any element of this crime; that is now appears from the record that there it no disagreement between the State's witnesses and the defense witnesses as to how far the body of this boy was from the fence—which is the reason for their admission by the Court and the arguments urged by counsel at the time the motion was formerly made to withdraw them from the consideration of the jury.

The record as it now stands shows that the State's witnesses estimated the distance of the boy's body from the fence—which was a material point that the State's counsel urged was proved, or tended to be proved, by the exhibits of the boy's body, to the jury—the State's witnesses placed the distance of the body from the fence at 10 to 12 feet. The defendant did not controvert this in anyway; and, in fact, the witness, Joe Matosek for the defendant, placed the distance of the body from the fence also at 10 to 12 [fol. 136] feet. There is no issue as to how far the body

was from the fence. The witnesses agree, on both sides, that it was 10 to 12 feet.

Now, we move that these three exhibits showing the decomposed body of this boy—have no materiality and that they highly prejudice the defendant in this case and prevent him from having a fair trial; and we ask the Court to withdraw those exhibits from the consideration of the jury.

The Court: That's all of it. Well, it appears to me that questions for the jury are involved; and, therefore, the motions to withdraw certain issues and evidence are each overruled, and the renewed motion for a directed verdict is overruled.

RENEWAL OF MOTION FOR A DIRECTED VERDICT

Mr. Tacy: Now, just one more motion. At this time the defendant renews the motion for a directed verdict made at the close of the State's evidence, and, in view of the record made since said motion was made, adds to the previous motion this: That the evidence of the State witness Marvin Lambert—which is uncontradicted—says, that he told Mr. Triplett if he would make a confession it would be better for him, which is one of the tests of an involuntary confession, as stated in the case of State vs Jay, where the only thing that the deputy sheriff said to Jay at that time was: "It would be better for you if you tell us where the mare was."

[fol. 137] Mr. Beebe: Your Honor, we ask that Exhibit "P" go to the jury room, and in order to have it played, I think we will have to check out one or more of the jury members as to the use of the machine; and I wonder if we might do it at this time?

The Court: Yes, in the presence of opposing counsel.

Mr. Tacy: We have no objection to having it played.

Mr. Beebe: We will just have to show them how to use it.

Mr. Tacy: I understand that. We will all be present, of course.

The Court: They can be shown how to operate the machine that plays back the tape.

Mr. Beebe: Have any of the jurors had experience in one of these?

A Juror: I have had experience with a record machine, but not a tape machine.

Mr. Tacy: If the Court please, before arrangements are made for playing the tape recording, may myself and counsel have a word with the Court, in chambers?

[fol. 138] The Court: Yes, surely. You may just as well take the jurors to the jury room.

(After the Court had instructed the jury; and at 5:30 p. m. they retired to deliberate upon a verdict.)

(At 5:32 p. m., in chambers, in the absence of the jury, the following proceedings were had.)

Mr. Tacy: The defendant at this time objects to the playing of the tape recording, Exhibit "P" in the jury room, in the presence and hearing of the jury, for the reasons:

1. That there is no competent operator to operate said tape recording machine in the jury room, and that to attempt to instruct an inexperienced operator at this time would not give said person sufficient understanding and experience and ability to operate said tape recording machine.

2. That to play said tape recording before the jury after the close of all the other evidence and in the jury room, would give undue prominence to the testimony heretofore revealed by the tape recording. That to play the tape recording in the jury room would be equivalent to allowing a witness who had formerly testified to repeat before the jury his testimony, and to do so would lend undue prominence to the facts revealed by the tape recording.

Mr. Beebe: Let the record show that, according to the [fol. 139] recollection of the prosecuting attorney, counsel for the defendant Thomas O. Tacy, made a statement in open court, prior to the time the jury was sent to the jury room, stating, in effect, that he concurred in the State's request that the exhibit—that the recording, Exhibit "P", be sent to the jury room to be played by the jury. If that's not the record . . ."

Mr. Tacy: Well, naturally, the objection is still urged by the defense for the reason that, at the time the statement was made, the defense was not aware that members

of the jury were not experienced in operating said machine; and that, on further reflection, the defense feels that to play the said tape recording even by an experienced operator, would be to give undue prominence to that portion of the testimony and fix it more prominently in the mind of the jury and would be prejudicial to the defendant.

The Court: It's overruled. (Defendant excepts.)

(The tape recording machine was taken into the jury room and its operation in playing the recording back was explained to a juror, by County Attorney, William S. Sturges, in the presence of defense counsel, and said juror, so instructed, played said recording, Exhibit "P" to the [fol. 140] jurors during their deliberation.)

Verdict

On June 17, 1955, the jury returned into court the following verdict:

> "We, the Jury, find the defendant, Ernest Triplett, guilty of murder in the second degree."

Thereafter, and within the time allowed by the Court, the defendant filed the following:

Motion for a New Trial

Now comes the defendant and moves the court for an order setting aside the verdict of the jury returned into court and entered of record herein on the 17th day of June, 1955, and granting the defendant a new trial, for each and all of the following reasons:

1. The verdict of the jury is contrary to the evidence.
2. The verdict of the jury is contrary to law and to the instructions of the court.
3. It was error to admit in evidence, over the objection of the defendant, testimony of State's witnesses concern- [fol. 141] ing alleged oral admissions made out of court to detectives and police officers, for the reason that the same were not voluntary and were made while the defendant was being illegally detained for many days, without being taken before a magistrate, or charged with any crime.

4. It was error to admit, over the objections of the defendant, evidence of oral admissions and a purported confession of guilt, alleged to have been made to Detectives, Gibbons and Dennison, to staff doctors of the Mental Health Institute of Cherokee, Iowa, and one attendant at the same institution, for the reason that said admissions or confession were made after promises of leniency were were made; that the same were made while defendant was admitted to the screening center of the Mental Health Institute, by order of the Woodbury County Insane Commission, and while said defendant was under the influence of certain drugs, which rendered him incapable of making a voluntary statement. That said purported confession was inadmissible for the further reason that the defendant, at the time said purported confession was made had been held for twenty days without being taken before a magistrate, and subjected to continual grilling by officers in an effort to cause him to confess his guilt.

5. That it was error to admit, over the objection of the defendant, the tape recording, State's Exhibit P, of the alleged confession mentioned in Paragraph 4, for all the [fol. 142] reasons urged against said oral confession as set forth in Paragraph 4, and for the further reason that the said tape recording was made by a machine concealed from the defendant and without his knowledge that his statements were being recorded.

6. That it was error to allow the jury to take recording mentioned in Paragraph 5 into the jury room, over the objections of the defendant, and to play said tape recording during their deliberation.

7. It was error to admit in evidence, State's Exhibits, Q, Q1, Q2, Q3, Q4, Q5, Q6 and Q7, for the reason that said exhibits were involuntary, for all the reasons urged against the oral admissions alleged to have been made to detectives Dennison and Gibsons, and for the further reasons that no proper foundation was laid for the admission of said exhibits.

8. It is error for the prosecuting attorney to ask the defendant during his cross-examination concerning his use of narcotic drugs and other personal habits, and whether or not he had once been married to a woman who was a prostitute.

9. It was error for the court to instruct the jury orally during the defendant's examination of State's witnesses, in substance that there was no law requiring officers to warn an accused person that his statements might be used against him, and that confessions, if otherwise admissible, were not rendered inadmissible because officers failed so to [fol. 143] warn the accused, and that the accused was not represented by counsel when making admissions out of court, did not, in and of itself, render inadmissible an admission or confession, otherwise admissible.

10. That it was error for the court to fail to instruct the jury, in substance, that if they found the defendant guilty of some degree of the offense of which the defendant was guilty, they should convict him only of the lesser degree.

11. That the verdict was the result of the passion and prejudice of the jury against the defendant, created by matters other than the law and the evidence.

12. That the court erred in admitting in evidence, over the objection of the defendant, photographs of the decomposed body of Jimmie Bremmers as the same was without materiality or probate-value and which and only to arouse the passion and hatred of the jury against the defendant and prevent him from having a fair trial.

13. The court erred in not sustaining the defendant's Motion for a Directed Verdict of Acquittal when the same was made after the State had rested.

14. The court erred in not sustaining defendant's Motion for a Directed Verdict of Acquittal when the same was made after both the State and the defense had rested.

15. The court erred in giving to the jury instruction No. 13 (Thirteen) which was a restatement of the oral instruction given the jury during the taking of testimony, as set forth in paragraph (9) of this motion.

[fol. 144] 16. The court erred in ruling at the close of the preliminary hearing before the court without the jury, concerning the admissibility of the admissions, claimed to have been made, the evidence of the purported confession and tape recording thereof, that said admissions, purported confession and tape recording of the same were admissible.

17. The court erred in giving Instruction 16 to the jury.

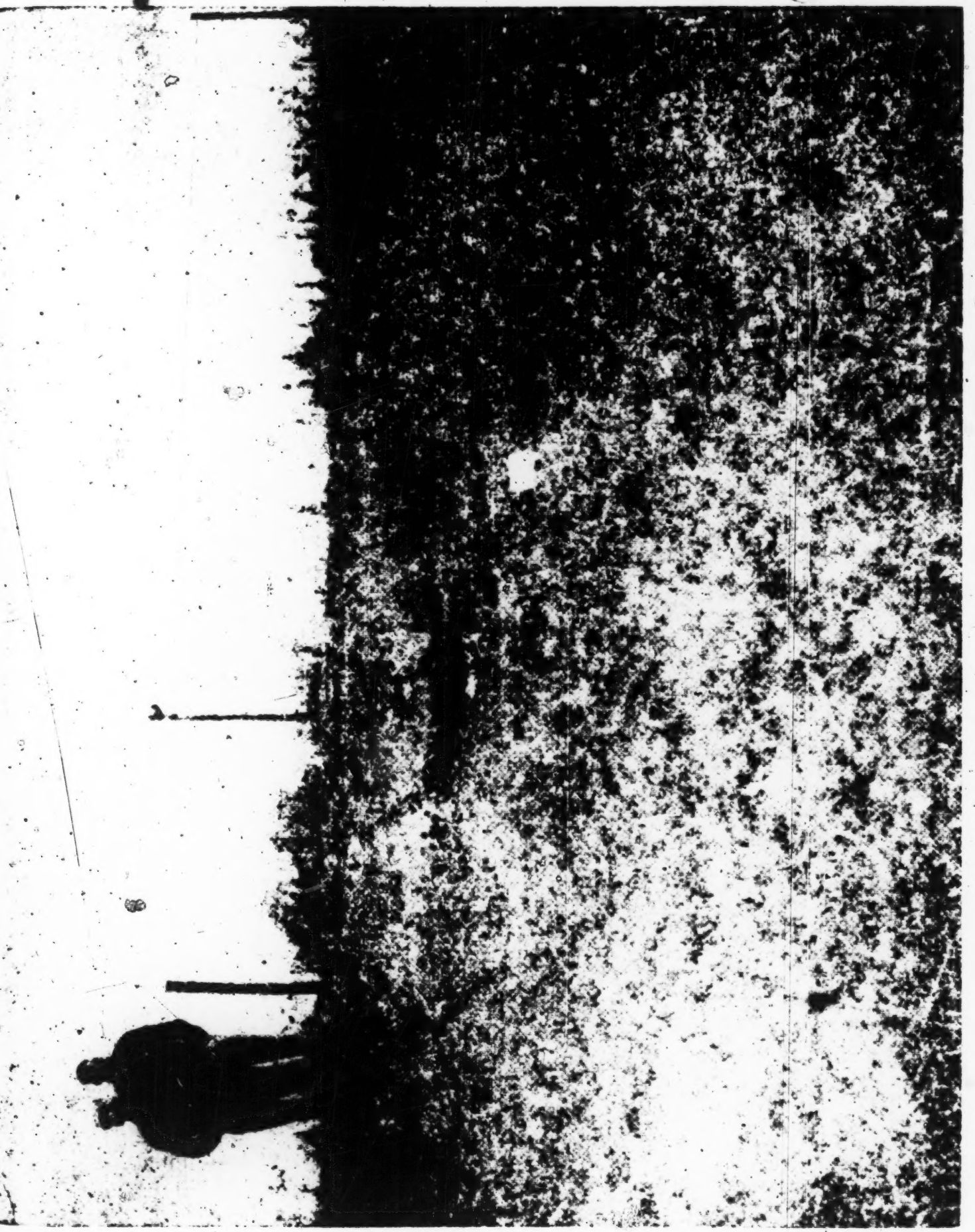
18. That each of the matters herein complained of and the cumulative effect of all of said matters prevented the defendant from having a fair trial.

19. That by reason of all the matters contained herein, including the admission in evidence of the purported confession and the tape recording of the same, the replaying of said recording in the jury room during the deliberation of the jury; the twenty day inquisition of the defendant by police officers, without taking him before a magistrate or charging him with any crime, constituted a violation of the rights of the defendant under the laws of Iowa, under Article (9) Section (1) of the Constitution of Iowa, the First Amendment of the Constitution of the United States, as made applicable by the 14th Amendment to state officers and police officers acting under color of their office and a violation of the "Civil Rights Law", of the United States of America.

20. As to each and all of the reasons herein set forth, the defendant submits to this court that a new trial should be granted by this court.

[fol. 145] STATE'S EXHIBIT C

[fol. 146] STATE'S EXHIBIT F



[fol. 148] CERTIFICATE AS TO RECORD

I, R. G. Rodman, presiding Judge on the trial of State of Iowa vs. Ernest Triplett, hereby certify as a part of the record in said case, the following Stipulation of Counsel and the Affidavit of the Juror E. Wulf.

(S.) R. G. Rodman, Judge of the 21st Judicial District of Iowa.

STIPULATION

It is stipulated and agreed by and between the defendant and the State of Iowa, through their respective counsel, that Exhibit P, the same being the tape recording of the confession of the defendant at Cherokee Mental Health Institute, Cherokee, Iowa on October 6th, 1954, was taken into the jury room before the jury commenced their deliberation. That the permission of the Court, said tape recording, Exhibit P, was placed in the play-back position by County Attorney, William Sturges, who, in the presence of defense counsel, instructed the juror in the mechanics of playing said tape recording; and, that no other comment was made by either defense counsel or the County Attorney; nor were any other persons present in jury room other than the jury and both of said counsel.

(S.) William S. Sturges, County Attorney, Plymouth County, Iowa. (S.) Thomas O. Tacy, Attorney for Defendant.

[fol. 149] AFFIDAVIT

STATE OF IOWA,
Plymouth County, ss:

I, Ed. Wulf, being first duly sworn, on oath say: That I was one of the jurors who deliberated upon and returned the verdict of murder in the second degree in the case of State of Iowa v. Ernest Triplett at LeMars, Plymouth, County, Iowa, on June 17, 1955.

I further state that the tape recording of the confession of the defendant, Ernest Triplett, which was played in open court in the presence and hearing of the jury, was played again in the jury room during the deliberation of

the jury and that the recording machine was operated by one of the jurors.

(S.) Ed. Wulf.

Subscribed and sworn to before me this 1st day of March, 1956.

(S.) William S. Sturges, Notary Public.

[fol. 150] Notice of Appeal—Filed July 7, 1955

To: William S. Sturges, County Attorney, Plymouth County, Iowa:

You are hereby notified Ernest Triplett, hereby appeals to the Supreme Court of Iowa from the verdict of the jury and judgment and sentence of the Court rendered thereon on the 7th day of July, 1955.

You are further notified that said appeal will come on for hearing at the next term of said court, or as soon thereafter as the same may be heard.

(S.) Thomas O. Tacy, Attorney for Defendant.

Acceptance of Service, (omitted in printing)

[fols. 151-152] Certificate as to Record

I hereby certify that this Abstract of Record contains all the evidence, rulings and proceedings had and done on the trial of this case, State of Iowa vs. Ernest Triplett, insofar as the same are necessary and pertinent to this appeal.

Thomas O. Tacy, Attorney for Defendant, 98-4th Street, Council Bluffs, Iowa.

Notice of Oral Argument

Notice is hereby given that the defendant desires to argue this case orally upon its submission to this Court.

Thomas O. Tacy, Attorney for Defendant, 98-4th Street, Council Bluffs, Iowa.

[fols. 153-154] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 155-156] [File endorsement omitted]

IN THE SUPREME COURT OF IOWA

No. 21 48864

STATE OF IOWA, Appellee,

vs.

ERNEST TRIPLETT, Appellant.

Appeal from the District Court of Plymouth County.
Honorable R. G. Rodman, Judge.

Dayton Countryman, Attorney General of Iowa, Raphael R. R. Dvorak, Assistant Attorney General, Dudley C. Lowry, Assistant Attorney General, William S. Sturges, County Attorney, Plymouth County, Iowa, Robert E. Beebe, Special Prosecutor, Sioux City, Iowa, Attorneys for Appellee.

Thomas O. Tacy, Council Bluffs, Iowa, Attorney for Appellant.

Appellee's Denial of and Amendment to Appellant's Abstract of Record—Filed July 27, 1956

[fol. 157] APPELLEE'S AMENDMENT TO ABSTRACT OF RECORD

Comes now the State of Iowa, Appellee herein, and denies that the Abstract of Record as filed by the Appellant is a true and complete Abstract of Record and hereby amends the same in the following particulars:

1

STATE'S EVIDENCE

CLARENCE BOCK, Direct Examination.

By inserting at line 26 on page 3, the following:

CLARENCE BOCK, called by the State, was sworn and testified:

Direct examination.

I am employed by Plymouth County doing road maintenance. On September 29, 1954, I together with others,

found the body of a little boy near Ridge Road in Plymouth County, Iowa. I, nor anyone else, touched or moved the body. I told my brother, who was working with me, to call the law, and I and Mr. Husman stayed with the body until Chief White got there.

[fol. 158] MRS. LUCILE HAMEL, called by the State, was sworn and testified:

Direct examination.

I live one-half block South of where Jimmy Bremmers lived. He was around my house all day and all evening on August 31, 1954. The last time I saw Jimmy Bremmers was between 7:30 and 7:45.

STEPHEN COUNTERMAN, called by the State, was sworn and testified:

Direct examination.

I live in Sioux City and on the night of August 31st, I was at my aunt's, Mrs. Lucile Hamel. Jimmy Bremmers was there that night. I left my aunt's home about a minute after eight. When I left I saw Jimmy Bremmers standing by a tree in front of my aunt's porch. I said goodbye to him and he said goodbye to me. That is the last I saw of Jimmy Bremmers.

Cross-examination.

I know it was 8:00 o'clock because a certain television show was just coming on and it comes on at 8:00 o'clock.

[fol. 159] JOSEPH H. BREMMERS, called by the State, was sworn and testified:

Direct examination.

I arrived home for supper on August 31 at about 5:30. Our family included Jimmy and my two daughters. We

finished supper around 6:00 or 6:15. I then went back to my new house and came home between 8:15 and 8:30. No one was home. I began looking for Jimmy and spent the rest of the night searching for him.

KARREN BREMMERS, called by the State, was sworn and testified:

Direct examination.

I am Jimmy Bremmers' sister. On the night of August 31, 1954, Jimmy, Pat, Mom and Dad, and I were home for supper, our entire family. My folks left right after supper, about 6:30. Jimmy went to play up at Hamel's. Pat went across the street, and I stayed in the house until my folks came home. Jimmy went up to Hamel's to play about 6:30 or 6:35. I never saw him after that.

ARTHUR N. MEISCH, called by the State, was sworn and testified:

[fol. 160] Direct examination.

I live in Sioux City; on August 31, 1954, I saw the defendant, Ernest Triplett, at my home around 6:00 and 7:00 in the evening. He was selling music lessons for Flood music store. I had a conversation with him at this time and he asked me the address of an Osborn family. I was home all evening; Jimmy Bremmers was not at my home all evening. On September 2, 1954, I called the police and reported that there had been a door-to-door music salesman at my house and he had been driving a car, and I thought it might be a lead.

DR. FRANK EPSTEIN, called by the State, was sworn and testified:

Direct examination.

I am a practicing dentist in Sioux City; Jimmy Bremmers was one of my patients. On September 29th I examined the mouth of a body and compared it with my X-rays and

diagnosis card of Jimmy Bremmers. The body is very definitely that of Jimmy Bremmers.

2

STATE'S EVIDENCE

[fol. 161] DR. THOMAS L. CORIDEN, Direct examination.

By inserting immediately after the period following the word "blows" in line 1 on page 5, the following:

I have a degree of Doctor of Medicine and in my opinion the cause of death was a cerebral hemorrhage and contusion or blow. The wounds in the head could have been caused by an instrument or rock held in someone's hand.

3

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By inserting at line 14 on page 10, the following:

Direct examination.

I interviewed Mr. Triplett on a number of occasions, one of which took place sometime the first of October, 1954, at the Mental Health Institute at Cherokee, Iowa. A tape recording was made of that interview which I have in my possession and which relates to certain statements made by Mr. Triplett with reference to the disappearance of Jimmy Bremmers.

[fol. 162] 4

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By inserting between lines 13 and 14 on page 11, the following:

Q. Do you understand that it is left to your discretion how long you may hold a man without filing a charge against him?

A. Mr. Triplett wanted to stay there voluntarily at the time.

Q. What statements did you make to him concerning the advisibility of his telling you something about this matter which is in controversy here?

A. I didn't have to go into any detail. I did not advise the defendant that the better thing or advisable thing for him to do was give me a statement of his activity in that respect to this crime nor did I tell him it would be better for him. I was just asking him to go over the activities of the night the boy was missing. I did not talk to him about the possibility of his being taken down to the Mental Health Institute at Cherokee, Iowa, for observation and treatment in case he made a statement to me; Triplett told me that he would be very glad to go down there as he felt they could do him a lot of good by some treatment of his [fol. 163] case of syphilis.

5

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By inserting at line 4 on page 12, the following:

Q. You naturally didn't know that, of course.

A. No.

I did not tell Mr. Triplett that I could help him more or that he could help himself more if he would tell the truth about this matter nor did I give him any inducements.

6

STATE'S EVIDENCE

WILLIAM A. DENNISON, Redirect examination.

By inserting immediately after the period following the word "exhibits" in line 14 on page 12, the following:

On three or four occasions I asked Triplett if we wanted a lawyer, and he said no he did not want any lawyer.

[fol. 164] STATE'S EVIDENCE

WILLIAM A. DENNISON, Redirect examination.

By striking the words "not easily" in line 24 on page 12 and inserting in lieu thereof the words "could not be".

8

STATE'S EVIDENCE

WILLIAM A. DENNISON, Redirect examination.

By inserting immediately after the period following the word "led" in line 24 on page 12, the following:

There was never any physical force used on Mr. Triplett and at the time the tape recording was taken at Cherokee there were never any promises or threats made to him in my presence. When I went down to the Mental Health Institute on the day Triplett confessed I did not know that he was ready to make a confession and Dr. Azordegan had not made any arrangement for the taking of the confession.

[fol. 165] 9

STATE'S EVIDENCE

WILLIAM A. DENNISON, Recross-Examination.

By striking all of line 8 following the period after the word "fine" on page 13, and all of lines 9, 10, 11, and 12 on said page 13, and inserting in lieu thereof, the following:

Q. But he steadfastly denied any guilt or knowledge of the disappearance of the Bremmers boy, did he not?

Q. But he steadfastly denied any guilt or knowledge of the disappearance of the Bremmers boy, did he not?

A. No, that isn't true. Well, he admitted before that of having the boy in the car. He did not admit the actual killing of the boy until about October 10th at the Cherokee Mental Health Institute.

10

STATE'S EVIDENCE

WILLIAM A. DENNISON, Recross-examination.

By striking the word "before" in line 34 on page 13 and inserting in lieu thereof the word "after".

11

[fol. 166] STATE'S EVIDENCE

WILLIAM A. DENNISON, Recross-examination.

By inserting immediately after the word "intends" in line 4 on page 14 the words "to introduce".

12

DEFENDANT'S EVIDENCE

ERNEST J. TRIPLETT, Direct examination.

By inserting between lines 23 and 24 on page 15, the following:

Q. Had he talked to you more than one time before the officers got down there?

A. No.

13

DEFENDANT'S EVIDENCE

ERNEST J, TRIPLETT, Cross-examination.

By striking all of lines 20, 21, 22, 23, and 24 on page 16, and inserting in lieu thereof, the following:

A. I don't remember.

[fol. 167] Q. Do you remember that your statement in answer to that question was: 'I did.'?

A. I don't.

Q. I will ask you if you remember Dr. Azordegan asking you this question:

'And you promise and you swear everything you tell is true'?

A. I do not.

Q. And do you recall your answer as being: 'Yes'?

A. I don't remember that.

Q. Do you think you would recall that if you would hear the recording?

A. I don't believe I would.

DEFENDANT'S EVIDENCE

JOSEPH MATOUSEC, Redirect examination.

By striking all of lines 27 to 34 inclusive on page 19 and inserting in lieu thereof, the following:

By Mr. Tacy:

Q. You did, at one stage of the interview, tell Mr. Triplett to come clean and tell you the details of how the boy was killed, before he asked you to tell him?

A. I think I probably mentioned that four or five times.

Q. Four or five times, to tell you how he was killed.

[fol. 168] A. Yes.

Q. And that is when he said to you he didn't know and if you would tell him how it could have been done that he would go along with the police and co-operate with them and make a confession?

A. In general, that's about the way it was.

Q. Well, did you indicate to him then that if he did go along with the police the things you had said to him about the Cherokee hospital would follow as a result of a confession?

A. Well, I think so.

Q. And the matter of your trying to secure counsel for him, in case he confessed, would go along with the subsequent confession, if he made one?

A. That is true; that is true.

STATE'S EVIDENCE

STANLEY M. CORBETT, Direct examination.

By inserting immediately after the period following the word "be" in line 7 on page 24, the following:

He stated that he had not been mistreated at any time, either in the jail in Sioux City or in the hospital at Chero-

[fol. 169] kee, and that he expected to go back to Cherokee for further treatment and then come back and help the police in Sioux City in connection with this case.

16

STATE'S EVIDENCE

RUSSELL H. WHITE, Redirect examination.

By inserting immediately after the period following the word "suggestions" in line 11 on page 26, the following:

I did not ever say to Triplett 'You killed the Bremmers boy and you know you did it and you had just as well tell us'. I never used any of that type of questioning. I do not do that in my questioning.

17

STATE'S EVIDENCE

JOSEPH DAVIDCHIK, Direct examination.

By striking the period following the word "Cottage" in line 23 on page 28 and inserting in lieu thereof, the following:

at 8 p.m I informed Triplett there was no question as to the nature of our interrogation, that Jimmy Bremmers, 8 years of age was missing, that Triplett said he saw the boy in that locality and that we were trying to establish [fol. 170] as to the boy's whereabouts. He said he would have been in this locality regardless if 500 murders had been committed. At that time I referred to him the reason why he referred to the missing boy as murder being the cause, which he didn't answer, and he immediately took off on a different line of conversation. I again asked him if he had seen the boy or had any knowledge, and he said, 'Well, I am very interested in clearing up this murder and co-operating in every way to have it cleared up.' I again asked why he referred to it as murder, and again he did not answer.

STATE'S EVIDENCE

JOSEPH DAVIDCHIK, Direct examination.

By striking from line 27 on page 28 the words, "He said that after 8 o'clock he went" and inserting in lieu thereof, the following:

He said that after 8 o'clock he returned to the Sioux City limits and he went

19

STATE'S EVIDENCE

JOSEPH DAVIDCHIK, Cross-examination.

By striking from line 5 on page 29 the word "not".

[fol. 171] 20

JOSEPH DAVIDCHIK, Cross-examination.

By inserting immediately after the period following the word "case" in line 7 on page 29, the following:

According to the statement I signed before the Grand Jury it does not specify murder, but I do recall being questioned on that point of the conversation and my signature is affixed to such statement which states that on September 4, 1954, I interviewed Ernest Triplett with reference to the Jimmy Bremmers missing person case.

He was always trying to co-operate. I did not at any time in questioning Triplett about the Jimmy Bremmers case ask him about the boy being killed or anything of that kind. I was there at the police station every night excepting when I had one day off after every six days, and I would have knowledge of whether or not anyone questioned Triplett after the hours of 10:00 o'clock P.M. I, nor anyone else questioned Triplett as early as 2:00 o'clock in the morning.

Redirect examination.

If anyone had come to see Ernest Triplett during the time [fol. 172] I was in charge at night, they would have had to

clear with me. No one came to see him or visit him during my time of duty.

Recross-examination.

All of the time that Ernest Triplett was in the police station nobody interviewed him between the hours of 10:30 P.M. and 7:00 A.M., the days I was on duty.

21

STATE'S EVIDENCE

RUSSELL H. WHITE, Direct examination.

By inserting immediately after the period following the word "found" in line 31 on page 31, the following:

I did not have any conversation with Mr. Triplett at the police station, nor did I talk with him from the police station out to the scene. No one else talked to him about the body having been found. None of the other officers in the car knew where we were going.

22

STATE'S EVIDENCE

RUSSELL H. WHITE, Direct examination.

[fol. 173] By striking the period following the word "going" in line 6 on page 32 and inserting in lieu thereof, the following:

nor did anyone tell Mr. Triplett the body had been found.

23

STATE'S EVIDENCE

RUSSELL H. WHITE, Direct examination.

By striking all of lines 7 to 14 inclusive on page 32 and inserting in lieu thereof, the following:

Triplett started up the bank, he took a little run for it, and moved diago[illegible]ly from his position for we had stopped

our squad car approximately thirty or forty feet from being even with the body on the road. From the point when I stopped the car and we got out it was impossible to see the place where the ground was covered, you have to go up the bank to see it. The terrain was level across the road to the left or north side. There was no other bank within a radius of a half mile. When Mr. Triplett got to the top and took hold of the wire he looked up over the bank. We had the spot covered where Jimmy was found. Triplett stood looking at the spot for ten or fifteen seconds and turned to Chief Gibbons and said, "What's that" and Chief Gibbons said, "Don't you know, Ernie?" and Harry said, "That's Jimmy." Mr. Triplett just dropped his head [fol. 174] and got very pale. It was very noticeable at the distance I was from him and he stood there with his head dropped for about five seconds and he turned to Harry and he said, "Well, I don't know anything about that" and then he walked back into the ditch. It was about four minutes by my watch before he regained any semblance of color in his face and at that time he got two red spots, one on each cheek, which were very noticeable.

Exhibit I depicts the bank in the general location where the body was found; Exhibit J. depicts the top of the bank and the location where the body was found and the distance of the location of the body from the fence; Exhibit F. depicts the general scene where the body was found and the fence line.

Mr. Triplett is of average intelligence and is exceedingly alert; his mind is not easily led or swayed.

24

STATE'S EVIDENCE

RUSSELL H. WHITE, Cross-examination.

By inserting between lines 27 and 28 on page 32, the following:

A normal person does not show reactions similar to those I just described of Mr. Triplett, unless they had known that something was over there and had some knowledge of [fol. 175] it. Seeing a spot covered up could not cause anybody to get pale unless they knew what was up there.

Based upon my experience I do not believe a person innocent of a crime would react in a nervous way and turn pale under these circumstances; I have had several experiences of a similar deal, and the people that were not guilty show no physical reaction. No one told Triplett to go up that bank and nobody was up on the bank, nor was anyone taking pictures there, nor was anyone over the fence in that pasture. My experience leads me to the conclusion that an innocent person in police custody and under suspicion would not, under these circumstances, be thrown into an excited state. I have interrogated people for twenty years.

25

STATE'S EVIDENCE

HARRY J. GIBBONS, Direct examination.

By striking from line 34 on page 33 and line 1 on page 34 the sentence, "He got out, went up the bank and took hold of the fence." and inserting in lieu thereof, the following:

Triplett got out of the car right away and immediately walked right over this ditch to the bank, climbed the bank, grabbed hold of the wire and looked over. There was no one up on the bank at the time Triplett went up the bank, [fol. 176] nor was there anyone in the immediate vicinity of where the covering was located on the ground; the other individuals who were out there were in the road.

26

STATE'S EVIDENCE

HARRY J. GIBBONS, Direct examination.

By striking the period following the word "him" in line 2 on page 34 and inserting in lieu thereof, the following:

and said 'come back down.'

27

STATE'S EVIDENCE

HARRY J. GIBBONS, Cross-examination.

By inserting at line 12 on page 35, the following:

I knew the body had been found although Triplett did not have this knowledge. Nothing was said to Triplett

about the body being found. I did not know where we were going nor for what purpose. I had no idea what preparation had been made. I did not know we were going out [fol. 177] there to give Mr. Triplett a chance to look on that scene to have him unexpectedly view the body of Jimmy Bremmers. Chief White had charge of that.

28

STATE'S EVIDENCE

HARRY J. GIBBONS, Redirect examination.

By striking the period following the numbers "1954" in line 18 on page 36 and inserting in lieu thereof, the following:

on his request, a voluntary commitment.

29

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By inserting immediately after the period following the word "found" in line 8 to page 37, the following:

When we arrived at the general vicinity where the body was found, we stopped the car on the right side of the road back about thirty feet from what would be a direct line in to where the body was found.

[fol. 178] 30

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By striking the words "Mr. Triplett" in line 13 on page 37 and all of lines 14 to 20 inclusive on said page 37 and inserting in lieu thereof, the following:

All at once Triplett started at an angle over to the bank and scrambled up the bank and grabbed hold of a wire and looked right over to where the body had been lying. No one said anything out there with reference to the body,

At that time I did not know where the body was located. There was nothing preventing Mr. Triplett from looking at any direction at that time. Triplett just kind of looked back over his shoulder and he started backing down the bank and I could tell he was visibly shaken. He was very pale and befuddled and did not know what to do next. No one was up on the bank or in the field when he went to the fence. I have been there on a number of occasions since that time and looked very closely at the possibility of seeing the place where the body was lying from the ditch on the road or any place out between the fences. I am slightly over six feet and I could not stand on the road and see the place where the body was located.

[fol. 179] 31

STATE'S EVIDENCE.

WILLIAM A. DENNISON, Direct examination.

By inserting immediately after the period following the word "present" in line 24 on page 37, the following:

Triplett told me that he made calls at homes wherever there were children and he said he had been in the vicinity of Casselman and Military Road and Cottage Avenue on the night of August 31st sometime after 7 o'clock. Then Triplett asked if we were inquiring about the missing boy and he told us he thought he had seen the boy out in that vicinity that evening and that he was talking to the boy. He described the boy's age as 8 or 9 and dressed in blue jeans, bare from the waist up. I then asked him if he would mind coming to the police station so we could discuss the boy further. He was not under arrest and I had no further conversation with Triplett that day.

The next day Triplett told us he thought he could take us over the route that he went that particular night. Officer Bucchino and I were directed by Triplett over his route and when we arrived in front of the Bremmers' home on Cottage Avenue he said, "This is where I talked to the [fol. 180] boy, he was standing right there. He didn't have anything on from his waist up." Triplett said he drove directly back to the hotel then, arriving there around 9:30.

I talked to Triplett again the following morning and he

said that he didn't see the boy in front of the house but rather at the Meisch home and that Jimmy left and a short while later he (Triplett) drove down the road and caught up to him before he got home and that he gave him a ride on the running board down to his house. Triplett stated that he conversed with Jimmy for a while and then Jimmy went in the house and that that was the last time he saw him. Then he said he started for Riverside and saw Jimmy alongside of the road trying to hitchhike. I said, "Do you realize that that's more than a mile from the Bremmers' home out there." He said, "Well, I don't know." I said, "The boy got out there afoot as fast as you drove out there in your car?" He said, "Well, I see what you mean. Maybe it wasn't him; I don't know."

At a later date I had another conversation with Triplett, in which he told us that he did not drink intoxicating liquors or allow children in his car. After I checked these stories I told Triplett that I knew they were not true and he admitted that he did allow children in his car and he became "pretty tight" on several occasions. Up to this time he denied that Jimmy Bremmers had been in his car. [fol. 181] However, after I told him of this information Triplett said that Jimmy did get in the car and stated further that he had seen him on the afternoon of August 31, and had made an appointment to see him again that evening.

I had another conversation with Triplett after the boy's body had been found.

32

STATE'S EVIDENCE

WILLIAM A. DENNISON; Direct examination.

By inserting at line 16 on page 40, the following:

Q. What was his answer?

33

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By inserting at line 21 on page 40, the following:

A. About whether his sexual desires pertained to men or women.

[fol. 182] 34

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By inserting at line 34 on page 40, the following:

I had a conversation with Mr. Triplett at the police station wherein Mr. Triplett brought up the fact that there must not be any fingerprints of Jimmy Bremmers in his car or he said he would do something about it. Several times he brought it up that there wouldn't be any of Jimmy Bremmers' fingerprints on his car.

In another conversation Triplett told me that without the body we didn't have a case.

35

STATE'S EVIDENCE

WILLIAM A. DENNISON, Cross-examination.

By inserting between lines 13 and 14 on page 41, the following:

When we took Triplett out over the route he had driven [fol. 183] with the Bremmers boy we were doing it so as to determine whether he knew what he was saying or not and we thought that the trip might help clear him of any implication in the crime. I told him that I would be glad to check any alibi that he had for the time that he couldn't account for.

Redirect examination.

Exhibits K and K-1 are in Ernest Triplett's handwriting, written in my presence, and no threats or promises or inducements were made to obtain the writing of that statement. Exhibit L was written by Ernest Triplett before he went to the Mental Health Institute on September 15, stating that he wanted to go up there and be put under observation and to receive treatment. No threats, promises or inducements were made to obtain that statement.

I or someone questioned Mr. Triplett on practically every day but not all day, every day.

Q. What was the average length of the period of questioning?

A. Oh, some days he may have, sometime during the day, been down there a couple or even three hours between 8:00 in the morning and 5:00 o'clock; other days it would be maybe a half hour or not any more than an hour.

[fol. 184] Q. Were these other things discussed with Mr. Triplett besides this immediate case?

A. Oh, yes.

36

STATE'S EVIDENCE

WILLIAM A. DENNISON, Cross-examination.

By striking from line 19 on page 41 the word "possibly".

37

STATE'S EVIDENCE

WILLIAM A. DENNISON, Cross-examination.

By inserting immediately after the period following the word "boy" in line 21 on page 41, the following:

I did not deny that he didn't have some knowledge.

38

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

[fol. 185] By inserting immediately after the period following the word "down" in line 3 on page 42, the following:

Q. Now, did Mr. Triplett just come out voluntarily and say, 'I don't want a lawyer to represent me while you are holding me here in custody without any charge. I just want to sit here or stand here; I like it around here'? Did he come forward voluntarily and suggest he wanted to sign a statement that he didn't need a lawyer at that time and didn't want one?

A. Oh, yes. He seemed to like it there at that time.

39

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By striking from line 20 on page 43 the words, "He said his state-" and all of lines 21 and 22 on said page 43 and inserting in lieu thereof, the following:

Triplett said his statement was being made voluntarily. The first conversation that was had with Triplett after lunch was shortly after 1 o'clock.

[fol. 186]

40

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By inserting immediately after the period following the word "alright" in line 27 on page 44, the following:

Triplett said he did not get any blood on his hands or on his clothes.

41

STATE'S EVIDENCE

WILLIAM A. DENNISON, Direct examination.

By striking the quote and the period following the word "Yes" in line 7 on page 45 and inserting in lieu thereof, the following:

, it was on Tuesday night that I killed the boy. That date would be August 31st."

42

STATE'S EVIDENCE

WILLIAM A. DENNISON, Cross-examination.

By inserting immediately after the period following the [fol. 187] word "now" in line 19 on page 46, the following:

I told him I thought he had some knowledge of the crime which I would like to know about; I did not tell him it would

be better for him if he did tell me about it than for him to keep on concealing it until it was found out, nor did I use words similar to that. I do not use persuasive language. The only reason I could possibly give him was that I wanted to know. I told him we were interested in finding the missing boy. And I never told Triplett that I thought it would be better for him if he told me the truth and admitted the details of the crime. I did not tell him that people that make confessions get off easier than those that don't.

43

STATE'S EVIDENCE

WILLIAM A. DENNISON, Cross-examination.

By striking the period following the word "Triplett" in line 26 on page 46 and inserting in lieu thereof, the following:

or any medication of any kind.

[fol. 188] 44

STATE'S EVIDENCE

WILLIAM A. DENNISON, Redirect examination.

By inserting immediately after the period following the word "there" in line 28 on page 49, the following:

I did not notice anything of an abnormal nature when I saw him in the hospital on October 6.

45

STATE'S EVIDENCE

HARRY J. GIBBONS, Direct examination.

By striking from line 25 on page 50 the name "Bill Sanguin".

46

STATE'S EVIDENCE

HARRY J. GIBBONS, Cross-examination.

By inserting immediately after the period following the word "recording" in line 19 on page 53, the following:

[fol. 189] Q. Doesn't the law say you must take him before the nearest magistrate without unnecessary delay?
A. Yes, sir.
Q. And you didn't do that, did you?
A. I believe the delay was necessary.

47

STATE'S EVIDENCE

HARRY J. GIBBONS, Cross-examination.

By striking from line 19 on page 53 the words "Mr. Triplett did use the" and all of lines 20 and 21 and the words "exact words." in line 22 on said page 53 and inserting in lieu thereof, the following:

Dr. Azordegan asked Triplett what his intentions were, if he was going to commit an act of sodomy; I do not remember his exact words, but they were in there.

48

STATE'S EVIDENCE

HARRY J. GIBBONS, Redirect examination.

By inserting at line 26 on page 53, the following:

[fol. 190] Redirect examination

I did not know where the tape recorder was sitting and I do not know whether anyone else could see it or not.

STATE'S EVIDENCE

WILLIAM A. DENNISON, Recross-examination.

By inserting immediately after the period following the word "ditch" in line 11 on page 55, the following:

This confession corresponds quite closely to the facts as I really found them to be. It is my opinion, based upon the confession and other circumstances, that Mr. Triplett is guilty.

STATE'S EVIDENCE

MRS. DELORIS OSBORN, Direct examination.

By inserting at line 12 on page 55, the following:

MRS. DELORIS OSBORN called by the State, was sworn and testified:

[fol. 191] Direct examination.

I live approximately one mile from where the Bremmers home was on August 31st; it is up Casselman. Ernest Triplett, the defendant, came to my house about 10:00 or 10:30 in the morning, and he returned about 8:00 in the evening; I place this time by a television show that was just starting after I got back in the house. Triplett was there three or four minutes. Triplett said he was going down to see some little boy on Casselman Street. Triplett left my home close to five minutes to 8:00.

DAVID OSBORN called by the State, was sworn and testified:

Direct examination.

Mrs. Deloris Osborn is my mother. I saw Mr. Triplett on the front porch of our house on the day last summer he

was there about music lessons. He came to the house about 10 minutes to 8:00 in the evening. I talked to Mr. Triplett on the front porch, he was right beside me. Mr. Triplett took ahold of my wrist, then when my mother came, he let go. He left about 5 minutes to 8:00.

MARVIN LAMBERT, called by the State, was sworn and testified:

[fol. 192] Direct examination.

I am a police officer and was serving on the Sioux City police force during the months of August, September, and October of 1954. I had occasion to interview Ernest Triplett several times regarding the Jimmy Bremmers boy. The first time I talked with him he denied talking with Jimmy Bremmers. On further questioning he admitted that he talked with him the evening of the 31st and told us various stories as to where and how he met him. The first story he told was that he picked up the Bremmers boy on the way to Bremmers' house, on Casselman Street, and took him to his home. I investigated this statement. I and Detective Sergeant Bucchino talked to Triplett again, and Triplett changed his story by saying he made an appointment with the Bremmers boy in the afternoon to see him that evening, and that he did meet him that night in front of his home right before 8:00 o'clock. We asked Mr. Triplett where he took the boy from the front of his house, but he refused to tell us anything from then on.

Cross-examination.

The defendant's stories varied from time to time concerning when and under what circumstances he met Jimmy Bremmers. We checked each story that he gave us.

[fol. 193] Redirect examination.

I never made any promises or threats or inducements to Triplett. None of these interviews were held during hours in which a person would normally be sleeping or eating.

LOUIS PETERSON, called by the State, was sworn and testified:

Direct examination.

I am a detective on the Sioux City police department on my 18th year; I was so employed in the months of August, September, and October of 1954. I made an investigation of a car brought to the police station for investigation in reference to the Jimmy Bremmers missing boy case. I observed numerous small prints and striations and prints of a small child. On the interior, over the cowl on the right-hand side, opposite the driver, they were numerous, but they were not a proof print, they were smeared, but they showed indications of small fingers; and on the left-hand front door there were two striations, including three fingers each, of the longer fingers; and those protruded downward from the door handle as if someone had made a pass for the door, and as the three fingers went down they showed a variation of pressure. To the rear of the car, along the balance of the side and over the left rear fender and across [fol. 194] part of the trunk, it showed three finger striations. I was one of the first officers to arrive at the scene where the body of Jimmy Bremmers was found. State's Exhibits C, D, F, H, I, and J are true and accurate reproductions of the scene as I observed it, at the spot where the body of Jimmy Bremmers was found.

Cross-examination.

These striations on the car which Mr. Triplett was driving that night were more than dust marks, they were impressions, they had taken a filament of the old paint off. They were all the same hand. They were not marks that would enable anybody to take a fingerprint from. The prints of the striations were a little outstanding, the two that came down from the door handle were, as if there may have been a struggle and someone was reaching for the door handle to grab it.

TOAS WARNSTADT, called by the State, was sworn and testified:

Direct examination.

I am Lieutenant of Detectives, Sioux City police department; I have been so employed 13½ years and I was so employed in the months of August, September, and October, 1954. During this period I talked with Ernest Triplett [fol. 195] and he told me three different stories about where he picked Jimmy Bremmers up.

Q. Did he state when these took place, that is, the day or the time of day?

A. He said it was the 31st, at 8:00—about 8:00 p.m. He said it was August 31, 1954.

I was present at the spot where the body of Jimmy Bremmers was found. It was just across the line into Plymouth County, a half a mile, then to the left, in a westerly direction, about two miles, on Ridge Road, which branches off Highway 29. I could not see the remains of the body from the road.

Cross-examination.

I doubt very much whether I could see the body if I were standing on the running board of a car and up on the high ground of the Ridge Road; from the position of the body, you had to be completely above the bank in order to see down, because the land sloped south. A person would have no trouble in running up that bank. I do not know why an ordinary human being would not be able to walk from the car to that swale or gully and run up the bank and seize the top strand of that wire, all in one movement. From some of the investigations and Triplett's own admission I would say that Triplett was the last one to see the Bremmers boy there. When I discussed the Bremmers boy with Triplett he gave me prompt and alert answers, but he gave [fol. 196] me three different stories where a not guilty person would only give one.

HAROLD CASEY, called by the State, was sworn and testified:

Direct examination.

I am a policeman on the Sioux City police department and have been since 1938. I am also Superintendent of the Bureau of Identification and was in such capacity during the months of September and October of 1954. I was present and viewed the body of Jimmy Bremmers on September 29, 1954. The body was lying in the southern direction from the road and three feet inside of the fence there was a spot which appeared to be old blood on the ground. It was dry. The principal part of the body was located twenty-one feet and six inches from the wire fence. From the fence area to the main part of the body could be seen several bones and teeth.

I observed Triplett's car in the police garage and found several latent npressions on the inside on the dashboard of his car. On the left front door there was several marks that appeared to be a hand which had been pulled down on the side of the door. They were not distinct enough to photograph or lift.

[fol. 197] 51

STATE'S EVIDENCE

BILL SANGUIN, Direct examination.

By striking from lines 29 and 30 on page 55 the sentence, "The third interview was recorded." and inserting in lieu thereof, the following:

I made a recording of the third interview and I recorded the entire interview.

52

STATE'S EVIDENCE

BILL SANGUIN, Direct examination.

By inserting immediately after the period following the syllable "ings" in line 32 on page 55, the following:

I have had experience, before that date, of making recordings.

53

STATE'S EVIDENCE

BILL SANGUIN, Direct examination.

By inserting immediately after the period following the [fol. 198] word "occasions" in line 5 on page 56, the following:

That same day after I had packed the machinery up and had taken it back downstairs, I played it back to myself and I have heard that recording played on several occasions since that time.

54

STATE'S EVIDENCE

BILL SANGUIN, Direct examination.

By inserting immediately after the period following the word "day" in line 6 on page 56, the following:

Everything that went on—that was going on in the office —is on the tape.

55

STATE'S EVIDENCE

BILL SANGUIN, Direct examination.

By inserting immediately after the period following the word "speaking" in line 9 on page 56, the following:

I was there all the time that the interview was being recorded in the afternoon and from hearing the recording [fol. 199] played back on several occasions it was an exact reproduction of what was said there.

56

STATE'S EVIDENCE

BILL SANGUIN, Cross-examination.

By inserting immediately after the period following the word "feet" in line 34 on page 56, the following:

It was outside the desk and the chair was back far enough, it was in plain sight of anyone that wanted to look for it.

There was nothing between myself and Mr. Triplett, our shoulders were bumping if we had wanted to be. Triplett had been sitting on a bed earlier but not at the time of the recording.

57

STATE'S EVIDENCE

BILL SANGUIN, Further direct examination.

By inserting at line 33 on page 61, the following:

Q. Mr. Sanguin, a voice on the recording just stated, 'that's Chief Gibbons over there.' Can you tell us whose [fol. 200] voice that was?

A. Dr. Azordegan, and Triplett answering.

Mr. Beebe: Can you turn it back for a little?

A. Oh, that's Triplett. I'm sorry. I didn't understand. I misunderstood that part. That's Triplett talking.

58

STATE'S EVIDENCE

BILL SANGUIN, Further direct examination.

By inserting immediately after the period following the word "recording" in line 33 on page 64, the following:

Our telephone is in the office, and somebody had called.

59

STIPULATION OF THE TAPE RECORDING

By striking from line 2 on page 69 the words "what you do" and inserting in lieu thereof the words "what do you".

[fol. 201] 60

STIPULATION OF THE TAPE RECORDING

By inserting between lines 21 and 22 on page 75, the following:

Q. (By Harry Gibbons) What did you and Jimmie talk about on the way out there, Ernest?

A. What did we talk about?

Q. Uh huh, what did you talk about?

A. He tried to run away and where he was going and how he thought he could make it and this and that.

Q. And when you drove him out to the country, Ernest, that's what you had in your mind though was to have a little party with him?

A. Yes.

Q. You intended to—what—commit an act of sodomy with him when you got out there?

A. I didn't know.

Q. I mean, is that what you would like to have done when you got out there?

A. Yes.

Q. That is, you intended to insert your penus into his rectum or did you intend having him go down on you or you do down on him? (pause) What did you intend to do Ernie?

A. I didn't intend to do anything but only go for a ride.

[fol. 202] Q. I see, did you stop out there and park along the highway for a while before you started playing with him?

A. Yes.

Q. And had you ever been on that road before, Ernie?

A. No.

Q. How did you get there from out on the Military Road? How did you drive to go out there?

A. I can't possibly re-trace it, but all I know is I got there alright.

61

STIPULATION OF THE TAPE RECORDING

By striking all of lines 16 to 34 inclusive on page 81 and all of lines 1 to 19 inclusive on page 82.

62

STATE'S EVIDENCE

WILLIAM A. DENNISON, Cross-examination.

By inserting immediately after the period following the [fol. 203] word "word" in line 16 on page 89, the following:

Every word that was said down there are on there.

63

STATE'S EVIDENCE

WILLIAM A. DENNISON, Redirect examination.

By inserting immediately after the period following the word "conversations" in line 22 on page 89, the following:

From hearing it played and from having been there, it is full and complete, true and accurate.

64

STATE'S EVIDENCE

WILLIAM A. DENNISON, Recross-examination.

By inserting at line 31 on page 89, the following:

In this recording Triplett was weighing and thinking out his answers to the questions before he answered them, which accounts for the fact that he hesitated and dragged out his answers.

[fol. 204] 65

DEFENDANT'S EVIDENCE

RAYMOND FLOOD, Direct examination.

By striking from line 6 on page 96 the name "Merlin Inman" and inserting in lieu thereof, the following:

Lloyd LaFleur, of the Dixon Motor Company.

66

DEFENDANT'S EVIDENCE

RAYMOND FLOOD, Direct examination.

By inserting immediately after the period following the word "kind" in line 22 on page 96, the following:

Q. Did you see any signs of finger marks in the dust on the cowl of the car, on the right-hand side?

A. I wasn't looking for anything especially of that kind.

67

DEFENDANT'S EVIDENCE

RAYMONP FLOOD, Direct examination.

[fol. 205] By striking from line 21 on page 98 the word "They" and all of line 22 on said page 98 and inserting in lieu thereof, the following:

I did not send them to any laundry or anything like that.

68

DEFENDANT'S EVIDENCE

RAYMOND FLOOD, Cross-examination.

By inserting immediately after the period following the word "that" in line 10 on page 100, the following:

Q. Did you have a complaint or a call from some people in Riverside that complained about Mr. Triplett's conduct out there?

A. No.

69

DEFENDANT'S EVIDENCE

RAYMOND FLOOD, Cross-examination.

By inserting immediately after the period following the word "night" in line 30 on page 100, the following:

I do not know anything about fingerprints, nor did I [fol. 206] examine the car for fingerprints.

70

DEFENDANT'S EVIDENCE

DOROTHY GREENLEE, Direct examination.

By inserting immediately after the period following the word "all" in line 27 on page 101, the following:

I did not pick up the clothes but the woman that was working for me did.

71

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Direct examination.

By inserting immediately after the period following the word "car" in line 16 on page 113, the following:

Q. Were those matters then suggested to you by the police officers who were questioning you?

A. Well, they didn't help me fill in the story any, as far as that goes.

[fol. 207]

72

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Direct examination.

By inserting at line 33 on page 113, the following:

Q. Were you without money at that time, Mr. Triplett?

A. Well, I didn't have enough money to hire a good front.

73

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting at line 27 on page 119, the following:

Q. Mr. Triplett, I shall ask you one more question regarding parties heretofore known by you. Were you ever acquainted with, or know of, a Doris Spence?

A. I don't remember.

(Objected to as incompetent. Sustained.)

Q. Do you recall having a conversation with Mr. Denni-
[fol. 208] son and Mr. Bucchino on September 15, 1954?

(Objected to as incompetent. Overruled.)

A. I have had a lot of conversation with them. I wouldn't know about the date on that deal.

74

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting immediately after the period following the word "things" in line 32 on page 119, the following:

Q. Do you recall whether or not on that same day telling the police officers that you had an act of perversion with your sister-in-law?

A. I don't remember.

Q. Is it not true, Mr. Triplett, that at one time you were married to Doris Spencer?

(Objected to as incompetent, etc. Overruled.)

A. Yes.

Q. And you stated—previously when I asked you the question as to whether you knew Doris Spencer, you said you did not.

A. I didn't say that. I said I didn't remember.

[fol. 209] Q. You don't remember Doris Spencer, but you remember being married to her?

A. I forget them people and I forget them. When I've got rid of them, I forget them.

75

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting immediately after the period following the word "through" in line 13 on page 120, the following:

I can testify different than that and get by with it; just roll it around.

Q. Mr. Triplet, I again hand you what the reporter has marked as State's Exhibits Q through and inclusive of Q-7 and ask you whether or not said exhibits contain statements made by you to police officers Bucchino and Dennison and whether or not you have read this statement before?

A. I haven't got no glasses on. I deny everything on my constitutional rights, right there; everything you've got I deny; try and prove it.

[fol. 210] 76

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By striking from line 3 on page 121 the period following the word "house" and inserting in lieu thereof, the following:

, about fifteen minutes of 7:00.

77

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting immediately after the word "store" in line 12 on page 121, the following:

; I was there, and Beverly was there. I don't know if she was alone or someone with her;

78

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting after the word "car" in line 26 on page 121, the following:

[fol. 211] , a maroon Hudson,

79

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting immediately after the period following the word "three" in line 2 on page 122, the following:

Q. What was the color of your two shirts?
A. Oh, I had on a color that—it was a light blue cowboy shirt with four buttons on each cuff, one of them was.
Q. What was the color of your other shirts?

A: Doggoned if I know what the color of them other ones were; I can remember that one in particular; I always liked it good.

80

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting immediately after the word "me" in line 3 on page 122, the following:

on September 2nd

[fol. 212] 81

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting immediately after the period following the word "me" in line 10 on page 122, the following:

He told me he wanted the keys to the car.

82

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting immediately after the period following the word "car" in line 15 on page 122, the following:

Q. Mr. Triplet, do you recall the first day that you went over to the police station in Sioux City?

A. Yes.

Q. Did you speak with Mr. Bucchino and Mr. Dennison on that date?

A. Yes.

Q. Didn't you, on that date, admit being at the Osborn home on the evening of August 31st?

A. I don't know what I——

[fol. 213] Q. But you do recall having this conversation with Mr. Bucchino and Mr. Dennison?

A. Oh, man; I've been talking to them guys for a long time.

Q. Do you recall having this conversation with them the day you were brought to the police station?

A. Yes, I recall the day I was brought to the police station, all right.

Q. Do you recall talking to Mr. Bucchino and Mr. Dennison at that time?

A. Sure.

Q. Didn't you tell Mr. Bucchino and Mr. Dennison at the time which I have just mentioned, that on August 31st you drove down Casselman Road from the Osborn home to the Meisch home?

A. I can't follow that. I don't believe there was any—I don't believe that—I think you've got your wires crossed on that; I believe you do. I mean, I don't—they wasn't questioning me about a missing boy; I'll give you that, plain out.

Q. You deny you talked with them about the missing boy on that day?

A. For two days.

Q. I am talking about the day you were taken to the police station. Do you deny that was mentioned in any way?

A. Well, I'll tell you where it was mentioned.

Q. Mr. Triplett, would you please answer my question? [fol. 214] A. Yes. Do you want to know what I was talking to?

Q. On the day you were taken to the police station——

A. Tony Bucchino says,——

Q. Was the case of the missing boy mentioned to you?

A. I hardly believe it was.

Q. Then you deny that it was mentioned?

A. I don't think they talked on that; I'm pretty positive certain they didn't. I was in on the scoop, and I would have known.

Q. Why did you think you were in the police station?

A. Well, after all, I got my information from Flood, I mean, to come down there to be questioned, there is a missing boy.

Q. And weren't you, in fact, questioned about him that day you were taken over there?

A. I think there was a couple of questions but there wasn't too many.

83

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting immediately after the period following the word "another" in line 26 on page 122, the following:

I do not recall when I told the police officers in Sioux [fol. 215] City that I saw a boy standing in the road. I do not remember telling the police at any time that I had had a conversation with Jimmy Bremmers; and I do not remember telling the police that I had had a conversation with Jimmy Bremmers on the evening of August 31, 1954.

84

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting between lines 2 and 3 on page 123, the following:

Q. You were lying when you talked to the police?
A. That's right.
Q. All the statements you told them were lies?
A. That's right.

85

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting at line 21 on page 123, the following:

Q. And did he on that occasion tell you if you wanted [fol. 216] one he would furnish a member of the Sioux City bar of your choice?
A. I didn't know anybody. How could I get a choice?
Q. Did he say he would furnish you with an attorney if you wanted one?
A. I can't look through his eyes.
Q. Did he ask you that?
A. I imagine he did.
Q. And what did you answer him?

A. I told him there wasn't no charges filed against me yet so I didn't know whether I needed a lawyer; I thought I might need three, if they ever got around to filing a charge.

86

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting at line 10 on page 125, the following:

Yesterday I testified about visiting the scene, with certain officers, where the body of Jimmy Bremmers had been found.

Q. Would you tell what you recall seeing out there?

(Defendant claims his rights under Constitution of the U. S. and of Iowa. Sustained.)

[fol. 217] 87

DEFENDANT'S EVIDENCE

ERNEST TRIPLETT, Cross-examination.

By inserting at line 30 on page 126, the following:

Q. On September 2nd, 1954, in a conversation with Mr. Bucchino and Mr. Dennison, at Sioux City, Iowa, didn't you tell them that you were in the vicinity of Edmonds Avenue between 6:30 and 8:00 o'clock p. m., on the evening of August 31, 1954?

A. I couldn't give you the — that street, exactly, but I might have said that; and I'm a stranger in Sioux City, I tell you; and I didn't know the streets; and they knew all the answers; so I let them go ahead.

I have no personal ag-rievance against the police in Sioux City. They done all they could.

I remember telling them I returned to the Osborn residence that evening. I think something was mentioned about my telling the officers I drove south on Casselman Road after I left the Osborn home. I did not turn off Casselman Road. I drove down to the corner to the grocery store, a mile south of there. It could be I told the officers I turned onto Cottage Avenue. I do not remember telling

[fol. 218] the officers I saw a little boy standing there and that I stopped and talked to h[illegible] on September 3rd, it came up later. I told the officers Bucchino and Dennison, in this same conversation, that I could take them out to the place where I talked to the boy. I, Dennison, and Bucchino went driving, but I don't think we got out there.

Q. Who was driving?

A. Dennison.

Q. And where were you sitting?

A. I was sitting in the back seat.

Q. And where was Mr. Bucchino?

A. He was up in front with Dennison.

Q. They left you in the back seat by yourself?

A. Sure; I wasn't going to run away.

When we turned off Military Road we were going south.

Q. Then didn't you tell the officers to turn right?

A. Yes, I did. I got them on the wrong go that time; I remember that very distinctly.

Q. And when you told the officers to turn right, they did turn right, didn't they?

A. Yes.

Q. Isn't it true that you were then on Cottage Avenue?

A. I believe that's right.

Q. Isn't it also true, Mr. Trollett, when you told the [fol. 219] officers: 'This is where I talked to the boy' that they stopped the car and they were immediately in front of 2701 Cottage Avenue, the home of Jimmy Bremmers?

A. I don't believe I did. I believe I'll stick with that, because I think I'm more or less right on it.

I told the police officers that after I talked to Jimmy Bremmers that I returned to the Bus Hotel and when I returned I watched the Liberace program; I don't know what was on before the Liberace program.

On September 3rd, if I said I had Jimmy Bremmers in my car, I said it for one reason or another.

Q. Do you recall having a conversation with Mr. Davidchik of the Sioux City police, in the police station, on September 4, 1954, in which you told him that you would go back out into the area of Jimmy Bremmers after he had disappeared if there had been 500 murders? Do you recall making that statement to Mr. Davidchik?

A. No, I didn't; I didn't make that statement.

Q. And didn't you also tell him, on that same day,——

A. Davidchik——

Q. —that you——

A. —who is Davidchik? Oh, he's that night captain, ain't he? I was thinking of another guy.

[fol. 220] Q. You do know his name is Mr. Davidchik?

A. Yes, I do.

Q. Do you recall telling him that on September 4th?

A. I made a little slip there. I meant that I would have been out there, and I meant to emphasize it; and, of course, I was doing business in the neighborhood. I couldn't have got out of that.

Q. That's right.

A. And I give him that version of it on that; and that's the reason he brought up the murder on the testifying against me, because they hadn't nobody asked or said anything about the kid was murdered or even died. I believe that's right.

Q. Didn't you also, on that day, tell Mr. Davidchik you talked to Beverly Williams at the Flood music store around 9:00 or 9:10?

A. I don't recall all that was said to Davidchik. We got along pretty good. He's a pretty swell guy.

Q. Mr. Triplett, didn't you tell the officers, on that same day (September 4th), you saw Jimmy Bremmers go into his house and get a plaid shirt?

A. I believe I was—that picture come to me over in Cherokee. I was only trying to help them out on that picture I saw.

Q. Didn't you tell this to the officers on September 4th, in Sioux City?

A. I don't know what date it was I told them officers.

[fol. 221] Q. And didn't you tell the officers you then saw Jimmy Bremmers run around the corner of the house and up over the hill behind his home?

A. Yes; but I knew I couldn't have done that, because when Gibbons took me out there I seen right away you couldn't even begin to run a car across that ditch there; and I knew I had made a bad statement on that, all right.

Q. Didn't you also, on this day, say you saw Jimmy Bremmers back up on the highway after you left his home?

A. I don't believe I stated whether it was Jimmy Bremmers or not, on the highway.

Q. But you said you did see a little boy up there?

A. I believe that picture come to me in that form.

Redirect examination.

The only voluntary statement I made as to seeing Jimmy Bremmers was that I saw some children playing in the Meisch yard and I thought one of them might have been him; but I gave them a fabulous story on that—I give them a fabulous story on that other.

Q. Mr. Triplett, do you have any reason why that you, under serious questioning for day after day, that you do wear out rather easily?

A. Well, I wouldn't say I wore out too easily. I put a [fol. 222] few of the big boys to sleep down there on the desk.

After I got down to Cherokee, they appeared to take this tape recording.

I got the same amount of sleep there. I never checked my sleep or eats any. No, and it didn't bother me too much.

Recross-examination.

State's Exhibits K, K-1 and L, previously admitted on legal proposition, here are re-offered on factual proposition. Admitted over defendant's objections.

88

STATE'S REBUTTAL EVIDENCE

By inserting at line 34 on page 130, the following:

The Court: The State's rebuttal evidence, if any, may be introduced.

STATE'S REBUTTAL EVIDENCE

TONY BUCCHINO, called by the State, in rebuttal, was sworn and testified:

[fol. 223] Direct examination.

My name is Tony Bucchino and I'm a detective sergeant on the Sioux City police force. I worked with the other

officers on the Bremmers case and questioned Mr. Triplett several times. He told me at first that he had noticed a boy with a butch haircut that was bare from his waist up, about eight or nine years old, on a street off Casselman Street.

The next day on September 3rd, I had another conversation with Mr. Triplett. Mr. Triplett told Lieutenant Dennison and myself that he went to Osborn's house on Military Road and from Osborns he went to Meisch's and talked to a little boy and that he left him standing in the street and went back to town. On the same day Triplett stated he was positive he could show us the road, and that he would show us where he was. The three of rode out. Mr. Triplett gave the directions. When we got to Cottage Street he said 'Turn to the right.' We turned right and approximately five or ten feet East of the Bremmers home, he stated, 'Here's where I seen that boy.'

On the following day I had another conversation with Mr. Triplett at which time he changed his story again and said that he called to Jimmy Bremmers and that the boy got in his car and he drove him home and Jimmy went inside, then Jimmy Bremmers came out of the house, ran [fol. 224] east on the porch to the east corner of the house and ran around the house up in the hills and disappeared.

Later, the same morning, Captain Davidchik told me Triplett had another story to state so we questioned him again. He then stated that after leaving the Jimmy Bremmers boy at his house he went to 325 Center.

On September 4, Captain Davidchik and I had a further conversation with Triplett. Triplett would say, 'I have another alibi' and those are his exact words.

At the end of my conversation that I have been testifying to, Mr. Triplett said, 'Well, I guess I have no more excuses.'

On October 5, at the police station, Detective Lambert and I were questioning Ernest Triplett and he stated again that he finally had the picture. He said that he saw Jimmy Bremmers in the afternoon of August 31, 1954, in front of his home, that he talked to him and made an appointment to meet him in front of his house that evening; that at 8:00 o'clock after leaving the Osborn home he saw Jimmy Bremmers, asked him to get in his car, which Jimmy Bremmers

did. We asked him where he and Jimmy Bremmers went at that time, and he wouldn't answer. Then he said, 'Well, Tony, I guess my alibi of ever having Jimmy Bremmers in the car has blowed up.'

Approximately a week after the arrest Lieutenant Dennison and I talked to Mr. Flood at his place of business. Mr. Flood asked us whether or not we had found a steel in the car when we searched it. We said we had not and then [fol. 225] he showed us a flat piece of steel which he stated was used by guitar players and that Triplett's was the size of a 12-guage shotgun shell and was round and heavy. He said, 'Well, Triplett did have one when he was out selling these lessons, and I have never found it.'

I do not remember telling Mr. Flood that he would be embarrassed if he would not cooperate.

Talking to Mrs. Flood prior to the time the body was found, she asked me whether or not I thought Mr. Triplett was guilty. At that time I stated we were not positive but I told her that if Triplett was guilty and if he was found guilty he should hang for the crime that he committed. I did not say I would live to see the day he was hung because I didn't even know whether he was guilty or not.

Cross-examination.

In my talks with Triplett I did not tell him that I believed he was guilty of the crime. But I said that I knew he had not told us all he knew about it. Each time we interrogated him, after finishing his story, he would say, 'That's all I know about it.' After checking his story we would come back and say that wasn't true so he would snap his fingers and say 'I've got a different picture now.' At no time did I mistreat Mr. Triplett, nor did I tell him I thought he was guilty.

[fol. 226] Q. You never told him you thought he was guilty?

A. No, sir.

Q. But, for 20 days he was never accused, in your presence, of being guilty?

A. No, sir.

I told Mrs. Flood I thought he was guilty. I did not say I though he ought to be hanged. I said that if the jury found him guilty they should hang him.

Q. Do you, then, here and now, in open court before this jury, accuse Mrs. Flood of telling something on the witness stand, under oath, that is untrue, when she said that you said, 'He's guilty, and I'm going to hang him if it's the last thing I ever do'? Do you mean she testified, under oath, to something that is false? Do you tell the jury that?

A. Yes, I do.

We worked just as hard to get Mr. Triplett out of it as we did to file charges on him. Every day we would ask him if he wanted an attorney and we told him he could use the phone which was standing in front of him at all times, but he stated from day to day that he didn't want an attorney. We also told him that he didn't have to answer our questions if he didn't want to.

[fol. 227] Redirect examination.

We were able to verify the whereabouts of Mr. Bremmers and Mr. Dowty between the hours of 8:00 and 9:30 of August 31st, but not the whereabouts of Mr. Triplett.

Mrs. Luella Edwards, called by the State, in rebuttal, was sworn and testified:

Direct examination.

I am Mrs. Luella Edwards and I live in Riverside. In September of 1954 I made a telephone call to Mr. Flood at their music store and I told him that there was a man representing his music store, that he was poorly dressed, and that he stopped in the street and wanted the children to get in the car, a '40 or '41 Plymouth. Mr. Flood told me that he had nobody out in Riverside or any place else and he said that all his representatives were real mannered and nicely dressed. The Floods denied having Triplett employed.

Mrs. Doris Garner, called by the State, in rebuttal, was sworn and testified:

[fol. 228] Direct examination.

I am Mrs. Doris Garner and I live in Riverside one block from Mrs. Edwards, who just testified. On Septem-

ber 1st, 1954, I saw the defendant, Ernest Triplett, at my neighbors with several children. Twenty minutes later he knocked at my door. I could smell liquor on him. I telephoned Mr. Flood of the Flood music store and asked him if he had a representative in Riverside. I described Triplett and told him that he was in an old gray car and that he had been drinking. Mr. Flood said that he wasn't their representative, that they all had new-make cars. Mr. Flood said he would take my address and telephone number and look into it. The man I described was Mr. Triplett, the gentleman sitting here at the table.

FLOYD OSBORN, called by the State, in rebuttal, was sworn and testified:

Direct examination.

My name is Floyd Osborn and I live in Sioux City and have taken my child, David, to the Flood music store for music lessons. On December 20 I had a conversation with Mr. Flood. I told him the attitude the salesman took towards David. I told him he grabbed him by the arm and I told Mr. Flood these facts several times. Finally [fol. 229] I was forced to take the boy out of the school because I felt that Mr. Flood was shielding Mr. Triplett.

Cross-examination.

I still tell the jury I discussed the man with Mr. Flood four or five times even though Mr. and Mrs. Flood have testified that I did not make any such report to them about anything in connection with David. I made the complaint to the police department.

RUSSELL H. WHITE, called by the State, in rebuttal, was sworn and testified:

Direct examination.

My name is Russell H. White, Assistant Chief of Police of Sioux City. On the morning of September 2nd, 1954, I called Mr. Flood and had a conversation with him and

asked him if he had a man working for him as a salesman and asked him what kind of a car this man was driving and he told me it was a 1941 Plymouth and that the man's name was Ernest Triplett. I asked him if he would keep Mr. Triplett available that morning and he said he wasn't going to send him out anyway because he had received several complaints by phone on Triplett yesterday. If [fol. 230] Mr. Flood testified here that he never said anything to me about having any complaints or calls concerning Triplett, that fact would not be true.

FOSTER THOMPSON, called by the State, in rebuttal, was sworn and testified:

Direct examination.

I live at Sioux City and I am the clerk of the District Court of Iowa for Woodbury County, and was such clerk in the years 1954 and 1955. State's Exhibit R is an "Information of Insanity, Inebriety or Epilepsy". Ernest J. Triplett's signature appears on the information and is notarized by a deputy in my office, E. E. Runge. State's Exhibit S is from the State of Iowa Mental Health Institute at Cherokee. Both Exhibits are a part of the permanent files maintained by me in my office.

STANLEY M. CORBETT, called by the State, in rebuttal, was sworn and testified:

Direct examination.

I am Stanley M. Corbett and I have been a lawyer in Sioux City for twenty-one years. I was President of the Sioux City Bar during the year 1954. On October 4, [fol. 231] 1954, I had a conversation with Triplett at the police station at which time I told him that in the event he wanted to secure a writ of habeas corpus to be released from jail that several lawyers would be glad to offer their services. Triplett told me he preferred to stay there because he didn't know where he would go if he were to go

outside for he didn't believe he had a job and, second, that the police had treated him well, kept his clothes clean and that he did not wish to leave the jail at all. He stated that after the Bremmers' case was cleared up he wanted to come and work for Mr. Gibbons, who he liked so much. He stated that he had been well treated during his stay in Cherokee and that he had been under treatment for syphilis while there. He stated to me that he hoped he would go back to Cherokee for his disease needed further treatment.

Cross-examination.

Before I saw Triplett I thought that his constitutional rights might be violated as he was being held against his will in jail. After talking with him, I concluded that his constitutional rights would not be violated. I went to him because I felt that the bar owed him a duty to explain his rights. I do not believe his rights were being invaded since he was staying there and didn't wish to leave. I absolutely do not think it was the duty of somebody to file an action in habeas corpus.

[fol. 232] Harold Casey, called by the State, in rebuttal, was sworn and testified:

Direct examination.

I am the same officer who testified previously and was at the scene on Ridge Road when Mr. Triplett arrived. I was standing at the front of the squad car about thirty feet in front of the car they had driven up in. No one else was present besides myself and the members of the car in which Mr. Triplett rode in. No one was up in the field where the body was found. I did not see anyone out there taking photographs. At the time Triplett went up the bank there was no one out in the field. I was there to see there was no one else present.

WILLIAM A. DENNISON, called by the State, in rebuttal, was sworn and testified:

Direct examination.

After the arraignment of Mr. Triplett I stopped at Flood music store with Detective Bucchino and asked Mr. Flood to come to the office. He did, and I asked him if anything new had come to light regarding the Bremmers case. I said from what Ernest Triplett said and what he has in [fol. 233] his mind you might be embarrassed later on. Mr. Flood said 'What's that about?'. I said that Triplett told us that he had it all figured out that you were the one that killed the boy.

State's Exhibits Q, Q-1 through Q-7 is a statement I took from Ernest Triplett on September 15, 1954. It was taken by shorthand by Gertrude Taggart, and Mr. Triplett read it himself. There were no promises, threats or inducements given to Mr. Triplett before or after he signed the statement.

(State's Exhibits Q, Q-1 through Q-7 received in evidence, over objection.)

Note: After the instructions were read and the bailiffs sworn, the following transpired:

Mr. Beebe: Your Honor, we ask that the Exhibit P go to the jury room. And in order to have it played, I think we will have to check out one or more of the jury members as to the use of the machine; and I wonder if we might do that at this time.

The Court: Yes, in the presence of opposing counsel.

Mr. Tacy: I have no objection to having it played.

[fols. 234-242] ATTORNEYS FOR APPELLEE'S CERTIFICATE

We hereby certify that the above and foregoing Amendment to and Denial of the Abstract of Record is necessary in order that a correct and complete record may be on file in this Court. We further certify that the record set out in the foregoing Denial of and Amendment to the Abstract of Record is correct and that the same, together with Appellant's Abstract of Record is a full, true and correct abstract of all those portions of the record in the court below and in

the trial of this cause in said court which are material for the full consideration of this appeal.

Dayton Countryman, Attorney General of Iowa, Raphael R. R. Dvorak, Assistant Attorney-General, Dudley C. Lowry, Assistant Attorney-General, William S. Sturges, County Attorney, Plymouth County, Iowa, Robert E. Beebe, Special Prosecutor, Sioux City, Iowa, Attorneys for Appellee.

[fol. 243] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 244] IN THE SUPREME COURT OF IOWA

365
48864

STATE OF IOWA, Appellee,

v.

ERNEST TRIPLETT, Appellant.

Appeal from Plymouth District Court.—R. G. Rodman, Judge.

The defendant, having been charged in an indictment returned by the grand jury of Plymouth County with the crime of murder was duly tried and convicted by jury verdict of murder of the second degree. From sentence and judgment on the verdict he appeals. Affirmed.

Thomas O. Tacy, of Council Bluffs, for appellant.

Dayton Country, Attorney General, Raphael R. R. Dvorak and Dudley C. Lowry, Assistant Attorneys General, William S. Sturges, County Attorney, and Robert E. Beebe, Special Prosecutor, for appellee.

[fol. 245] OPINION—Filed November 13, 1956

THOMPSON, C. J.

Jimmy Bremmers, an eight-year old boy, disappeared from his home in Sioux City about 8 p.m. on August 31, 1954. His badly decomposed body was found in a field in

Plymouth County on September 29th following. Medical testimony at the trial showed that the cause of death was two severe wounds in the head, each of which indented the skull. These wounds, according to the expert testimony, could not have been made by a blow from a hand or fist, but must have been caused by striking with a wooden or metal instrument.

The defendant had been in Sioux City for only a few weeks at the time Jimmy Bremmers disappeared. He was on August 31 employed as a door-to-door salesman or solicitor of business by a music store. His duty was in large part at least to interest parents in music lessons for their children. He had been working in the neighborhood where Jimmy Bremmers resided with his parents on August 31. He drove an automobile owned by his employer, and had the use of this in the evenings after his working day had ended. On September 2nd, when the disappearance of the Bremmers boy had become generally known and a considerable search instituted, the police department of Sioux City received word that a salesman for the defendant's employer had been soliciting business in the Bremmers neighborhood on August 31. Officers thereupon called upon the employer, learned that the defendant was the employe who had been in that part of Sioux City, and took him to the police station for questioning.

The defendant was held in the station without charge filed for about sixteen days, during which time he was questioned daily, but apparently not at great length on any one day, about his knowledge of the disappearance of the boy. During this time also, one Joseph Matousec, or Matosek, a private detective in Sioux City, called at the jail and was permitted to question the defendant. Matousec was not employed at that time by anyone, nor was he acting for the police or other authorities or at their request. At the [fol. 246] time of the trial he was in the employ of defendant's attorney. When he talked with the defendant at the jail, he told him he thought if he did commit the crime, "very possibly the only thing they could do to him would be to commit him to Cherokee (a state mental hospital) because of his mental condition." The witness was at this time no more than a volunteer investigator, having no connection with any law enforcement authority.

The defendant remained in the custody of the police without charge filed until about September 18, when he was transferred to the mental hospital at Cherokee upon his own application. Testimony of police officers is that he said he thought they might there be able to aid him by treating him for syphilis. There is also testimony that on three or four occasions he said he did not want a lawyer; that he wanted to help solve the Bremmers disappearance. There is also testimony that on September 4th, when all that was known of the matter was that the boy was missing, the defendant said he was interested in cooperating in every way in clearing up "this murder"; and when asked why he referred to it as a "murder" he made no reply.

While the defendant was at the Cherokee hospital the body of Jimmy Bremmers was found. Thereupon he was taken from the hospital by police officers and to the place where the body was found. The roadway here is considerably below the level of the field in which the body lay, a short distance from the fence. It was not visible from the road. When the car stopped, there is evidence he at once went in a diagonal direction up the bank to a point outside the fence nearest to the body, without direction from anyone. When he saw the body he turned pale and said "What is that?"

After viewing the body the defendant was taken to the Sioux City police station and kept there for a few days. On October 1 he was visited at the jail by Stanley Corbett, president of the Sioux City Bar Association. Mr. Corbett [fol. 247] advised him that if he was being held against his will he was entitled to seek a writ of habeas corpus and the bar association would furnish him counsel. Mr. Corbett testifies: "He said he was not held against his will and he wanted to help the police solve the murder. I told him the bar association would furnish him counsel but he said he did not want to leave the jail or the hospital, whichever place he might be." On cross-examination the witness said that the defendant gave two reasons for staying there: he had no other place to go and he wanted to stay there and work for the police chief in attempting to solve "this murder".

The defendant was then returned to the Cherokee institution, where on October 6th he confessed to the commis-

sion of the crime. The confession was obtained by Dr. Azordegan, one of the hospital physicians. Most of the material questioning was done by Dr. Azordegan, in the presence of police officers and of one Bill Sanguin, a hospital attendant who operated a tape recording device. This recording was upon the trial played to the jury, and later a juror was instructed in its operation and it was taken to the jury room upon its retirement for deliberation upon its verdict.

While the defendant was in the custody of the police and at the hospital he at all times denied guilt until the date of the alleged confession. There is evidence, however, that he admitted to the police officers that he had on August 31st while in the general neighborhood of the Bremmers home seen a boy answering Jimmy's description, and that in the evening he had picked up the boy, who rode on the running board of defendant's car a short distance to the Bremmers home; and that the boy said he was going to run away. No blood stains or finger prints were found on the car, and there were no blood stains on defendant's clothing which he had worn on the day in question.

[fol. 248] I. We turn to a consideration of the errors assigned for reversal. The first is that the confession was clearly involuntary as a matter of law, and should not have been admitted in evidence. The defendant urges strenuously that the Fourteenth Amendment to the Constitution of the United States was violated because he was held so long without a charge filed, and he was denied due process thereby. Of course the length of time he was held in custody without being taken before a magistrate to answer to a charge duly filed was much too long. Such a practice cannot be approved. But we have held that this, in itself, does not render a confession involuntary. It is an indicia of violation of constitutional rights but not conclusive proof. We pointed out in State v. Archer, 244 Iowa 1045, 1058, 58 N. W. 2d 44, 51, that holding a suspect illegally makes a confession obtained during this period of illegality inadmissible in the federal courts. McNabb v. United States, 318 U. S. 332, 340, 63 S. Ct. 608, 612, 87 L. Ed. 819. But this is a matter of practice rather than of constitutional right. State v. Archer, supra; Gallegos v. Nebraska, 342 U. S. 55, 72 S. Ct. 141, 145, 96 L. Ed. 86. Under the circumstances here,

where there is substantial evidence that the defendant preferred to stay in the jail or the mental hospital, and refused an offer of legal aid when it was tendered to him several days before the confession was made, we cannot say the detention without charge did more than make a question of lack of due process through involuntariness of the confession, for the jury.

The defendant does not testify or claim that any threats or promises were made by the police. We have said that the witness Matousec had no official connection; in fact at the time of the trial he was employed by the defendant. What he said to the defendant about escaping with no more than some time spent in the mental hospital did not profess to come from anyone in authority. It was no more than speculation, a volunteered opinion not binding upon any- [fol. 249] one.

There is testimony from the defendant that Dr. Azordegan told him, prior to the making of the purported confesssion, that "You are in here for being crazy, your are going to be in here for the rest of your life". Also that the doctor said if he admitted the crime "it would help me out and he would get me finally on a job over there, and that I wouldn't be in there any more than about two years". The defendant also suspected the doctor may have administered some "medicine" which made him sleepy and "I didn't feel natural". However, there is no other evidence of the administering of drugs and we think other testimony sufficient to make at least a jury question of defendant's normal mental condition so that he understood fully the nature of the confession. Turning to the alleged promises made by the doctor, no one other than the defendant claims to have heard them, and since the record shows Dr. Azordegan was at the time of the trial out of the United States there could be no denial. But the jury was not bound to take the defendant's testimony as true, even in the absence of contradiction. We have repeatedly so held. In Schulte v. Ideal Food Products Company, 203 Iowa 676, 677, 678, 213 N.W. 431, 432, we said:

"We have consistently held that a mere failure to produce direct contradiction to the testimony of a witness does not necessarily entitle such testimony to be deemed true. It must still stand the test of credibility, in the light

of all the circumstances surrounding the transaction. *This is particularly true in those cases where, from its very nature, no evidence is available to the adverse party to contradict such testimony.*" (Italics supplied.) To the same effect are Gilmer v. Neuenswander, 238 Iowa 502, 506, 507, 28 N.W. 2d 43, 46; Dibel v. Meredith, 233 Iowa 545, 557; 10 N.W. 2d 28, 34; Platter v. Railroad Company, 162 Iowa 142, 151, 143 N.W. 992, 996. The rule is especially [fol. 250] applicable in the case at bar, since Dr. Azordegan was at the time of trial beyond the jurisdiction of the court, and the defendant's vital interest in the case is evident, making the credibility of his testimony peculiarly subject to scrutiny.

The defendant cites and relies much upon Leyra v. Denno, 74 S. Ct. 716, 347 U.S. 556. Here a confession had been obtained from a defendant charged with murder, by a psychiatrist. The defendant was in custody charged with the murder of his father and mother. He was suffering from sinus trouble, and was told that he would be furnished medical treatment therefor. But the doctor sent to him was a psychiatrist, who proceeded to question him at length, using his knowledge of mental processes and finally convincing him that he should admit the crimes. The New York Court of Appeals held this confession inadmissible, but admitted other confesssions made a short time later. The United States Supreme Court, with three justices dissenting, held the later confessions also tainted. But in the case at bar the defendant knew the doctor questioning him was a specialist in mental processes. There is no evidence of undue pressure or use of hynotism or other special devices or questions calculated to overcome the will of the subject. The confession contains statements from the defendant that it was made voluntarily and without threats or promises. We find the situation so much different from that prevailing in the Leyra case that we hold it not in point. On the whole record we think the question of voluntariness was properly submitted to the jury, and its determination must be final.

II. Error is further assigned upon the court's ruling which permitted the tape recording to be taken to the jury room when it was deliberating. Whether the point is now available to the defendant is in serious doubt, since his

counsel at first agreed the recording might be so used. But shortly after the jury had retired objection was made on the grounds that there was no competent operator, and [fol. 251] further that to permit the playing of the record in the jury room would give undue prominence to this feature of the testimony. Whether objection could be lodged at this time is a serious question; but we have decided to consider the matter on its merits. The question is an open one in Iowa, but we find no merit in the assignment. A member of the jury panel was instructed in the operation of the machine, i.. the presence of defendant's counsel. It is not now contended, except by the objection, that the juror who was so instructed was not competent to operate the device, which is a comparatively simply procedure. In the absence of any showing that it was not properly operated, we give no further consideration to this part of the objection.

The only objection made to the admission of the recording in evidence was, in effect, that it was not voluntary, for reasons specified. The defendant cites Wright v. State, an Alabama Court of Appeals case found in 79 So. 2d, page 66. Here parts of the recording were not clearly audible, and the court held that the reproduction of the statements of the defendant were not shown to be accurate. For this reason it was held inadmissible; but the court said that where the accuracy of the reproduction was shown, together with the voluntary character of the confession, "there can be no question as to the admissibility of a recorded statement * * *"; citing 168 A.L.R. 927. In the case at bar there is ample evidence of the accuracy of the recording, and in fact the defendant stipulated that a transcript of the recording might be made and read into evidence, and this was done.

The real complaint here is that the recording should not have been taken to the jury room and there played during the deliberations. While we have not previously passed upon this exact question in Iowa, we find State v. Gensmer, 235 Minn. 72 51 N.W. 2d 680, 685, 686, to be squarely in point. Here a statement had been taken from the defend- [fol. 252] ant prior to the trial. This was introduced in evidence through a device known as a "soundscriber" and the record therefor. These were taken to the jury room,

and error assigned therefor. The Minnesota Supreme Court said:

"The statement was taken from defendant by means of a recording machine, and later a transcript of the statement was taken from the record. That is the modern substitute for a statement in longhand. It accomplishes the same purpose, but more expeditiously and more correctly. Defendant complains that the recording machine may be started and stopped at convenience and it does not record the conversations which took place when it was not in action. That observation can with equal force be made with reference to statements taken in longhand. No one questions that statements in longhand which have been properly received in evidence may be taken by the jury into the jury room. We can see no reason why the mechanism and the mechanized version of the statement may not also be received in evidence. In the latter case, no one can question the accuracy of the reproduction of the statements made by the person being questioned."

We are satisfied with the logic of the holding of the Minnesota court, and accordingly find no error at this point.

III. Defendant also complains of the admission of three photographic exhibits. Each of these showed the body of Jimmy Bremmers lying in the field where it was found, with the skull apparently separated from the torso. It is defendant's contention that the photographs served no purpose other than to inflame the minds of the jurors. If this were the sole purpose, the contention would necessarily be upheld. But the pictures showed another matter, which we think at least brought them within the fair discretion of the court as to their admissibility. It has been above that certain police officers testified that when the defend- [fol. 253] ant was taken to the road adjoining the field in which Jimmy Bremmers was found, and before it had been removed, the body was not visible from the road; but that the defendant alighted from the car and at once climbed the bank beside the road and stopped at a point on the boundary fence nearest to the body. The pictures each show the locale as described by the officers, with the field lying considerably higher than the roadway. They demonstrate the truth of the testimony that the road immediately opposite the point where the body lay goes

through a cut, with the fence separating the road from the field running along the top of a bank which prevents a view of the field from a car traveling along the highway. The photographs were clearly competent and material in showing the situation. They bore directly upon the weight and credibility of the testimony of the officers which tended to show that the defendant knew of the approximate location of the body which he could not see from the road. If there was a just reason for permitting these exhibits to be introduced in evidence, the incidental fact that they were gruesome, that they tended to injure the defendant's case would not make their admission erroneous. Legitimate evidence may not be excluded because it may tend to arouse the feelings of the jurors. State v. Stansberry, 182 Iowa 908, 912, 166 N.W. 359, 360, 361. The trial court has a considerable discretion in determining the admissibility of demonstrative evidence, and its ruling may not be reversed in the absence of an abuse of such discretion. State v. Stansberry, supra; State v. Christie, 243 Iowa 1199, 1210, 53 N.W. 2d 887, 892, 893.

IV. Assigned Errors Nos. IV and V are similar in nature and will be discussed in the same division of this opinion. We would be justified in refusing to consider these assignments, since they state alleged improper questions asked by the prosecuting attorney, and evidence claimed to have been improperly admitted, without referring to the pages of the record which show these incidents. We are left to [fol. 254] search the entire record to determine whether it substantiates counsel's statements in the assigned errors and in his argument. But, since this is a criminal case in which the defendant was convicted of a serious offense, we have taken upon ourselves the burden of making the required search.

(a). Upon cross-examination, the defendant was asked: "Do you know a Captain Green, in Omaha?" Upon objection being made as to the competency, relevancy and materiality of this question, the state's attorney said: "Your honor, I feel that the matters which are being brought up now are certainly of a serious nature * * *." Motion was then made to strike this statement, coupled with a request that the jury be admonished not to give it any weight.

Th objection was sustained and the jury admonished as requested.

In the same cross-examination the defendant having said that he had told certain police officers that he had been married to one Doris Spencer, he was asked: "* * * would you state whether or not you told the police that Doris Spencer was a prostitute?" Objection was made and promptly sustained by the court.

It is now the contention of the defendant that these questions injected such prejudice into the case that their evil effect could not be overcome, although answers were not permitted. It is to be noted that no request for a mistrial was made; the motions and objections of the defendant in each case were promptly sustained, and it must be assumed that at the time he was satisfied with the situation as it stood. There was nothing further the court was called upon or requested to do. Nor do we think the matters injected into the case by the questions and the statement of counsel were so prejudicial that we must say the court abused its discretion in refusing to grant a new trial because of them. The trial court has a considerable discretion in determining whether there has been misconduct of counsel or, if so, whether this has resulted in such prejudice as to deny a [fol. 255] defendant a fair trial. The questions and the remark of counsel do not seem to have been such as to reflect any particular obloquy upon the defendant. We think this situation comes well within the rule laid down in State v. Wheelock, 218 Iowa 178, 182, 254 N.W. 313, 316. and followed in State v. Jensen, 245 Iowa 1363, 1367, 66 N.W. 2d 480, 482. Other cases are cited in State v. Jensen, supra, at page 1368 of 245 Iowa, page 482 of 66 N.W. 2d.

(b). Further complaint is made of the admission into evidence of testimony of William A. Dennison. lieutenant of detectives in the Sioux City police department concerning a conversation he had with the defendant shortly after he was first taken into custody on September 2, 1954. We find the record shows this: That Dennison testified that the defendant told him that at one time, for about a four year period, he was a user of marijuana; that on the night of August 31, on which Jimmy Bremmers disappeared, he had smoked a marijuana cigarette in his hotel room; that the smoking of these cigarettes stimulated him sexually, and

that he had committed acts of sexual perversion with both men and women. The confession admitted in evidence contains this:

"* * * Are you playing with boy? A. Yes. Q. What kind of play was it? Kiss him, did you play with his hair? A. I kissed him and loved him up, and he didn't seem to mind so much * * * Q. But do you remember you started to open his pants? A. Yes. Q. For what intention did you open his pants? A. Whether I thought he was a girl or a boy I didn't know. Q. * * * As soon as you started to open his pants what he did? What action he did? A. He started to run away from me."

Later in the confession is this:

"Q. And when you drove him out to the country, Ernest, that's what you had in your mind, to have a little party with him? A. Yes."

[fol. 256] It is the contention of the defendant that the introduction of the evidence of his use of marijuana and of his admissions of acts of sodomy with others was improper. If so, of course it was highly prejudicial and must be held to constitute reversible error. But we think the evidence properly admitted. It leads plainly to the establishment of a motive for the killing of the boy, always an important consideration in criminal cases. Marijuana is a drug known to arouse the passions of its users, leading not only to stimulation of the sexual desires but to acts of cruelty and violence. The testimony of Lieutenant Dennison, coupled with the statements in the confession, supplied an important link in the state's case. The test is not whether it was harmful to the defendant, but whether it was error to admit it. If it was material and competent, the fact that it hurt the defendant is of no avail to him.

Evidence which has a material bearing on the issues in a criminal prosecution is admissible, even though it may tend to show the defendant guilty of another unrelated offense. Here the statement of other acts of sodomy was a part of the conversation between the defendant and a police officer. It was not offered to show another offense, but as a part of the entire conversation, an admission apparently volunteered or willingly made by the defendant himself. State

v. Crisman, 244 Iowa 590, 596, 57 N.W. 2d 207, 210, 211; State v. Campbell, 209 Iowa 519, 522, 228 N.W. 22, 23; State v. Burzette, 208 Iowa 818, 824, 825, 222 N.W. 394, 397.

V. Other errors assigned are general in nature and are answered by the discussion in the preceding divisions. We have carefully examined the record, and find nothing therein which indicates the defendant did not have a fair trial by due processes of law. Affirmed.

Bliss, Garfield, Hays, Oliver, Peterson, and Smith, JJ., concur.

[fol. 257] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 258] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1957

No. 5 Misc.

ERNEST TRIPLETT, Petitioner,

vs.

STATE OF IOWA

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—October 14, 1957.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 547 and placed on the summary calendar.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 547

ERNEST TRIPLETT,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

BRIEF OF PETITIONER ON THE MERITS

ERNEST TRIPLETT, *Petitioner*

By THOMAS O. TACY
VIRGIL TACY
HERBERT S. FRENCH
Counsel for Petitioner

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 547

ERNEST TRIPLETT,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

BRIEF OF PETITIONER ON THE MERITS

Opinion of the Court Below

The opinion of the Supreme Court of Iowa appears in 79 NW (2d) 391.

Jurisdiction

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C., Section 1257 (3) which provides in part:

> "(3) By Writ of Certiorari . . . where any title, right, privilege or immunity is specifically set up or claimed under the constitution . . ."

Constitutional Provisions

Article XIV, Section 1, of the Constitution provides:

> ". . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law."

Petitioner claims that his right to due process of law was denied him by 20 days illegal detention by police after arrest on suspicion, without a warrant, for the purpose of securing a confession before taking him before a magistrate and the admission in evidence on his trial of confessions and admissions made in an insane hospital after such 20 days detention.

Article VI of the Constitution provides:

> "In all criminal prosecutions, the accused shall have the right . . . to have assistance of counsel for his defense."

Petitioner claims that the right to assistance of counsel for his defense was denied him in the pre-trial stages of his prosecution, during which time false admissions and confessions were made by him and used against him on his trial.

Statement of the Case

The Indictment

On the 12th day of April, 1955, the Grand Jury of Plymouth County, Iowa, returned into court an indictment, accusing Ernest Triplett of the crime of murder and alleg-

ing that the said Ernest Triplett did, on or about the 31st day of August, 1954, in Plymouth County, Iowa, murder Jimmy Bremmers.

The Plea and Trial

To this indictment and the charge contained therein, the said defendant-petitioner, Ernest Triplett, entered his plea of Not Guilty, and on the 6th day of June, 1955, a trial was had to a jury on the issues raised by said Indictment and Plea. Petitioner was convicted of Murder in the Second Degree.

The Sentence

The Court pronounced judgment upon the verdict of the jury and on the 7th day of July, 1955, sentenced the defendant to life imprisonment in the State Penitentiary at Fort Madison, Iowa.

The Appeal

On the 7th day of July, 1955, the defendant perfected his appeal to the Supreme Court of the State of Iowa, judgment affirming the decision of the lower court was entered on date of November 13, 1956.

Rehearing

On date of January 18, 1957, a petition for rehearing in the Supreme Court of the State of Iowa was denied.

Petition for Writ of Certiorari

On a date within the 90 days prescribed for filing said Writ, a Petition for a Writ of Certiorari was filed in the Supreme Court of the United States. On the 14th day of October, 1957, the Supreme Court of the United States entered the following Order:

"The motion for leave to proceed in forma pauperis and the petition for the Writ of Certiorari are granted. The case is transferred to the appellate docket and place on the summary calendar."

Statement of Facts

Prior to Arrest

Jimmy Bremmers, an 8 year old boy, disappeared from his home in Sioux City, Iowa, at about 8:00 P.M. on August 31, 1954.

The petitioner had been in Sioux City about 2 weeks prior to the boy's disappearance. He was a salesman for the Flood Music Studio, Sioux City, Iowa, and drove a car furnished by the studio for solicitation of business. A resident of the neighborhood of the Bremmers home reported to police that petitioner had been soliciting business in that vicinity the evening that the boy disappeared. This report was made to the police on September 2, 1954. On this information alone, Assistant Chief of Police, White, telephoned Mr. Flood of the Flood Music Studio and asked him to have petitioner wait at the studio that morning until the police could question him about the disappearance of the Bremmers boy. Mr. Flood told petitioner of this request of the police and petitioner waited at the studio from 9:00 A.M. until about 1:30 P.M., at which time the officers arrived, questioned petitioner and took him into custody without a warrant. He did not seem excited or nervous while waiting for the officers (R. 57).

The corpus delicti was not established until September 29, 1954, at which time the Bremmers boy's decomposed body was found in a pasture over the line in Plymouth County, Iowa.

During Period of Arrest Prior to Arraignment

After his arrest the petitioner was held in custody and questioned daily by the police for one period of 14 days and another period of 6 days. During the interim between these periods of questioning by the police, petitioner was in the Mental Health Institute at Cherokee, Iowa (R. 24, 25). This questioning was on the assumption that the boy was dead and that petitioner was guilty of his murder (R. 11).

After petitioner had been in police custody under questioning for a few days, Officer Warnstadt, who then had charge of the petitioner in the police station authorized a private detective, Joe Matousec, to attempt to secure a confession from petitioner. Officer Warnstadt was in and out during the questioning. Mr. Matousec offered to secure counsel for the petitioner if he would confess to the crime and assured him that the only penalty would probably be a few years in the Mental Health Institute, after which he would be released. He found petitioner "co-operative to the point of exasperation." Petitioner offered to confess to the police if Mr. Matousec would tell him how the boy was killed. Mr. Matousec said investigators presumed the boy had been murdered (R. 10-11).

Offer of Counsel

On October 1, 1954, Mr. Stanley Corbett, then president of the Woodbury County Bar Association, Sioux City, Iowa, asked petitioner whether he wished to seek his release by petition for Habeas Corpus. Petitioner had previously been warned by Detective Harry Gibbons of mob violence if he secured his release and was out on the street (R. 74).

Immediately after this interview concerning a possible habeas corpus proceeding, petitioner was taken before the

Insanity Commission of Woodbury County, Iowa and committed on October 5, 1954 to the screening center of the Mental Health Institute at Cherokee, Iowa to be examined as to his sanity. The next day October 6, 1954, petitioner's confession was secured on a tape-recording machine in said institution by an attendant, two staff doctors and two Sioux City detectives, without the knowledge or consent of Dr. Brinegar, the Superintendent (R. 52).

Preparing the Confession

Prior to making this confession, the petitioner was warned by Dr. Azordegan that he was in the hospital for being insane and would have to stay there for life unless he pleaded guilty. He assured petitioner that he could help him only if he admitted his guilt and promised petitioner that if he would confess, he would be given employment at the hospital, kept about 2 years and then released. He administered different drugs or medicine to the petitioner who had a feeling of unreality during the taking of the tape-recorded confession (R. 66, 67, 68).

Petitioner and Dr. Azordegan worked out the details of the proposed confession together. The doctor told him what to say and petitioner repeated it. The doctor did not tell him he was guilty, but stated he could help petitioner only if he confessed guilt.

Proceeding in Trial Court

The petitioner denied and repudiated on the witness stand the facts set forth in the tape-recorded confession and all oral admissions and statements detrimental to him made during this 20 day period of illegal detention by the police.

Over proper objection of defense counsel, the tape-recorded confession was played before the jury and the

play-back machine and tape were taken to the jury room and the recorded confession again played by a juror before the jury during its deliberation (R. 82, 83, 84).

The Verdict

The jury found the petitioner guilty of murder in the second degree and he was sentenced by the Court to life imprisonment (R. 84, 141).

Conclusion of Statement of Facts

There was no evidence, direct or circumstantial, tending to connect the petitioner with the commission of the crime charged, other than his admissions and confessions obtained by the means above described. Petitioner was never seen at the scene of the crime or in the company of the boy. No blood was found on his clothing or in his car and no murder weapon was found anywhere. He had no record of conviction of any other crime. Petitioner was 52 years old at the time of his conviction. Since his conviction and life sentence, petitioner has been confined in the State Penitentiary at Fort Madison, Iowa.

Constitutional Provisions and Statutes Relied Upon

Article XIV, Section 1, Constitution of the United States.

Article VI, Constitution of the United States.

Federal Statutes Involved

U.S.C., Title 18, Rule 5.

State Statutes Involved

Section 758.1, Code of Iowa, 1954.

FEDERAL CASES INVOLVED

McNabb v. *United States*, 318 U.S. 332, 343, 344;
Upshaw v. *United States*, 335 U.S. 410; 69 S.Ct. 170;
Watts v. *State of Indiana*, 338 U.S. 49; 69 S.Ct. 1347;
Leyra v. *Denno, Warden*, 347 U.S. 556, 560, 561;
Mallory v. *United States*, 77 S.Ct. 1356.

STATE CASES INVOLVED

State of Iowa v. *Storms*, 113 Iowa 385; 85 NW 610;
State of Iowa v. *Thomas*, 193 Iowa 1004; 188 NW 689;
State of Iowa v. *Archer*, 244 Iowa 1045; 58 NW 2d 44, 49.

Questions Presented for Review

I

Was petitioner denied due process of law by admission of confessions in evidence on his trial, over objection that same were involuntary, said confessions having been obtained by threats and promises after 20 days of questioning before arraigning petitioner before a magistrate? (See Page 1 of Petition for a Writ of Certiorari, Par. 1 under caption "Questions Presented")

II

Was petitioner denied due process of law by not having assistance of counsel in the pre-arraignment stages of his prosecution? (See Page 2 of Petition for Writ of Certiorari, Par. 2 under caption "Questions Presented")

ARGUMENT

I

Petitioner Was Denied Due Process of Law by Being Held Illegally by Police, Under Arrest Without a Warrant, for a Period of 20 Days for the Purpose of Securing His Confession Before Taking Him Before a Magistrate.

This petitioner was held by the police in the jail at Sioux City, Iowa, and subjected to questioning for twenty days in an effort to secure a confession before taking him before a magistrate, after his arrest on mere suspicion, without a warrant. This unlawful detention was a violation of the statutes of Iowa and of the United States and is denounced as a denial of due process of law by the decisions of both the Iowa and the United States Supreme Courts.

Section 758.1, Code of Iowa, 1954, provides:

> "When an arrest is made without a warrant, the person arrested shall, without unnecessary delay, be taken before the nearest or most accessible magistrate in the county in which the arrest is made, and the grounds on which the arrest was made shall be stated to the magistrate by affidavit, subscribed and sworn to by the person making the statement, in the same manner as upon a preliminary information, as nearly as may be."

U.S.C., Title 18, Rule 5 provides:

> "(a) APPEARANCE BEFORE THE COMMISSIONER: An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby office empowered to commit

persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith."

Referring to the unlawful detention of the petitioner in the case at bar, the Iowa Supreme Court strongly condemned this 20 day detention and said in its opinion:

"Of course, the length of time he was held was much too long. Such a practice cannot be approved. But we have held that this, in itself, does not render a confession involuntary . . . " (R. 144).

In the case of *State* v. *Archer*, 244 Iowa 1045; 58 NW (2d) 44, a case wherein the accused was questioned intensely for four days before he confessed, the court reversed the case and said in part:

"The defendant simply gave up what seemed to him an unequal struggle. He was being held illegally and there seemed every indication that it was the intention of the officers, sworn to uphold the law but who were actually and effectively flouting it, to hold him and continue their questioning until he told them what they wanted to hear."

In the case of *State* v. *Thomas*, 193 Iowa 1004; 188 NW 689, quoted with approval in the recent case of *State of Iowa* v. *Archer, supra*, the Iowa Supreme Court said:

"Held by these officers in a room to which no friend of the defendant was admitted, he was subjected to four hours of rigorous and determined interrogation. Over and over again he denied all complicity in the alleged crime, only to have his statements rejected as false and met with the insistent demand upon him to con-

fess. True, the officers said they did not in so many words demand a confession, but that they were simply demanding that he tell the truth. This, however, is only a play upon words, for his assertion of what he claimed to be the truth was met by a constant repetition of a demand which implied he was telling a falsehood, and that no answer would be satisfactory which did not admit his guilt."

The record in this case reveals a striking similarity to the *Thomas* and *Archer* cases, *supra*. Note the testimony of William Dennison, Chief of Detectives, Sioux City Police Department:

"He was held by us in custody another six days after he was brought back from Cherokee the first time, about 20 days altogether. We were putting him through many series of questioning during the 20 days he was in the police station. We questioned him many times. We questioned him possibly almost every day. He was not questioned after midnight to my knowledge. I possibly told him I thought he was responsible for the disappearance of the Bremmers boy.

Q. And you wouldn't take 'no' for an answer, would you? A. No, I wouldn't" (R. 24, 25).

Concerning the persistence of the questioning, petitioner testified:

"Q. Will you state whether or not, as a result of these questionings for some 20 days in the police station, you allowed, as you say, to just let them talk, and didn't deny anything? A. That's all you could do. There was no use denying nothing, you would tell them; they would turn right around and shove it back in your mouth. I am human and can stand only so

much and I imagine I needed a rest. I sure did about the time I went down to Cherokee" (R. 70, 71).

That the illegal detention was for the purpose of securing a confession from the accused is clearly expressed by Chief of Detectives, William Dennison, who testified:

(*Cross examination by Mr. Tacy*)

"Q. I am asking you now, if he reiterated over and over that he was innocent, why didn't you take him before a magistrate before you got this confession, instead of afterwards? A. Because I still thought he was guilty" (R. 28).

Previously said William Dennison testified:

"Q. And you were holding him all this time on suspicion and taking him around all over the country wherever you wanted to, without taking him before a magistrate, as the law requires you to do, is that right? A. That's right.

Q. Now, you expected other people to obey the law, don't you? A. Absolutely.

Q. Don't you think a peace officer should also obey the law? A. Surely" (R. 19, 20).

Detective Harry Gibbons also testified, on cross examination, along the same line:

"Q. Now, at the time you got in this car and took Ernest Triplett on this ride out in the country, he was in custody of the law, wasn't he? A. Yes sir.

Q. Did you think you had the right to put him in the car and drive him any place you wanted to, just because he was there in jail? A. Yes, I thought I had that right" (R. 21).

The trip just referred to was to take petitioner to view the body of the boy on September 29th, after petitioner had been in custody without a warrant, on mere suspicion, since September 2nd. The foregoing testimony reveals a situation which is inconsistent with and a denial of due process of law. The tape-recorded confession and any admissions made by the petitioner during this period of illegal restraint were inadmissible on his trial, as a matter of law.

The defendant, now petitioner, on his trial repudiated all confessions and admissions made during this period of illegal detention, claiming they were induced by threats, promises of leniency and exhaustion.

It stands uncontradicted in the record that Dr. Azordegan, then a staff doctor, in whose charge defendant was placed in the Mental Health Institute at Cherokee, Iowa, threatened to keep him in the said hospital for life unless he confessed the crime and promised that if he confessed, he would see that he was employed at the hospital and would see that he was released after about two years. The doctor helped petitioner frame his confession story, but neither knowing at the time how the boy was killed, petitioner said he hit the boy with his hand (R. 49).

Thomas L. Coriden, coroner, testified that the blows which caused the death of the boy could not have been made by a human hand:

> "These blows could have been caused by a hammer. The holes were round to rectangular and in each case there were no ragged edges and the piece of bone was driven into the interior of the skull.
>
> Q. And you say it couldn't have been done by a human hand? A. No" (R. 2, 3).

While making an honest attempt to frame a confession which would give him the benefit of promised leniency, is it not logical that the accused would have revealed the manner in which the boy was killed and with what instrument, if he had actually committed the crime?

When Officer Warnstadt, who had the defendant in charge at the police station, authorized Joseph Matousec, a private detective, to interview defendant and attempt to secure a confession, petitioner tried to get Mr. Matousec to tell him how the boy was killed so he could confess it to the police in a satisfactory manner.

Mr. Matousec testified:

> "I found him co-operative to the point of exasperation. He told me if I would tell him how he committed the crime, he would admit it. There was no doubt in my mind that I could have gotten him to admit it if I had wanted to accept it on that basis. . . . He said 'I have no idea how the crime was committed.'
>
> Q. You mean he told you if you would tell him how the boy was killed, he would admit it to the police? A. That's right.
>
> Q. Did you make any statement to him as to how long he might be held at Cherokee, if he made a statement to the police? A. Well, I don't just remember about that. I think I probably told him that a matter of three or four years, or two or three years treatment possibly, and he would be released again, as I recall it.
>
> Q. On condition that he confess to the crime to the police? A. That's right" (R. 10, 11).

This interview between Mr. Matousec, under authority of the officer having petitioner in charge, points up the same fact brought out in the interview with Dr. Azordegan, namely: that petitioner did not know how the boy was

killed. Although Mr. Matousec later, convinced that Triplett knew nothing about the crime, did some investigational work on behalf of the defense, he was acting against the interests of the accused and attempting to secure his confession at the time he interviewed him in the jail under authority of Officer Warnstadt. Surely, an accused, so eager to confess, would have given the details of the crime had he been the one who committed it. Mr. Matousec testified that he considered the disappearance of the boy as a murder when talking to Mr. Triplett (R. 11, 12).

II

Your Petitioner Was Denied Due Process of Law by Being Deprived of Assistance of Counsel From the Time of His Arrest on Suspicion, Without a Warrant and Without Arraignment From the Date of His Arrest, September 2, 1954 to the Date of His Confession, October 6, 1954.

When the petitioner was visited in jail by Stanley Corbett, then president of the Sioux City Bar Association, who offered, on behalf of the bar association to furnish him counsel, petitioner declined. He told Mr. Corbett, among other reasons, that he was not charged with any crime and did not see the need of counsel. On his trial, he gave his real reason for not wanting counsel at that time. He was afraid of mob violence. He testified as follows:

> "Right then and there I was trying to prove to the detective force that I wasn't guilty and I figured they would turn me loose; but they made a steady customer out of me. He said if I wanted an attorney, he would get me one, but Mr. Gibbons said it would not be nice for me to get out on the street and let the public get hold of me, because, he said 'What they won't do to you.' So, I didn't have no place to go, I might as well stay and fight it out with them" (R. 74).

It seems rather significant that as soon as the bar association showed this interest in the case, papers were prepared for the signature of petitioner alleging that he was afflicted with insanity and a hearing had before the Insane Commission of Woodbury County, Iowa. Mr. Corbett's offer of counsel was made on the 1st day of October and petitioner was in the Mental Health Institute October 5th and his confession secured by Dr. Azordegan and the Sioux City detectives on October 6th.

It should also be remembered that this offer of counsel was on the 1st day of October and petitioner had then been held illegally since September 2nd, a period of 29 days.

The threat of mob violence, as testified to by the petitioner, is without denial in the record. This answers the testimony of some of the state's witnesses that petitioner preferred not to be released or taken before a magistrate during this long period of illegal detention under arrest without a warrant.

Even if petitioner had preferred to stay in jail to being taken before a magistrate, his preference would have no effect on the duty imposed by law upon the arresting officers to take him before a magistrate without unnecessary delay. This long period of detention of the petitioner, without assistance of counsel, and for the purpose of securing a confession before arraignment constituted a flagrant violation of petitioner's rights under the constitution and laws of Iowa and the Constitution of the United States. To admit in evidence admissions and confessions thus secured constituted a denial of due process of law.

Some former decisions of this Court which are applicable to the case at bar, includes:

McNabb v. *United States*, 318 U.S. 332, 343, 344;
Upshaw v. *United States*, 335 U.S. 410; 69 S.Ct. 170;
Watts v. *State of Indiana*, 338 U.S. 49; 69 S.Ct. 1347;
Leyra v. *Denno, Warden*, 347 U.S. 556, 560, 561;
Mallory v. *United States*, 77 S.Ct. 1356.

These cases all condemn the holding of an accused person with the intent and for the purpose of securing a confession before taking him before a magistrate as violative of due process of law and that admissions and confessions obtained during such period of illegal detention are inadmissible in evidence on the trial of the accused.

In the most recent of these cases, *Mallory* v. *United States*, this Honorable Court said:

> "The duty enjoined upon arresting officers to arraign 'without unnecessary delay' indicates that the command does not call for mechanical or automatic obedience. Circumstances may justify a brief delay between arrest and arraignment, as for instance, where the story volunteered is susceptible of quick verification through third parties. But the delay between arrest and arraignment must not be of such a nature to give opportunity for the extraction of a confession."

In the same case, the Court further said:

> "Police detention of defendants beyond the time when a committing magistrate was readily accessible constituted 'wilful disobedience of law.' In order adequately to enforce the congressional requirement of prompt arraignment, it was deemed necessary to render inadmissible incriminating statements elicited from defendants during a period of unlawful detention."

Mallory v. *United States*, 77 S.Ct. 1356.

CONCLUSION

For all the reasons set forth in this Brief and Argument, your petitioner submits to this Honorable Court that he has been denied due process of law and that his conviction should be set aside.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 547

ERNEST TRIPLETT,

Petitioner,

vs.

STATE OF IOWA,

Respondent.

PETITIONER'S REPLY BRIEF

ERNEST TRIPLETT, *Petitioner*
By THOMAS O. TACY
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PETITIONER'S REPLY BRIEF

Opinion of the Court Below

The opinion of the Supreme Court of Iowa is reported in 79 NW (2nd) 391.

Questions Presented for Review

The Respondent seems to be in error as to the order of this Court granting the Writ of Certiorari. Respondent states:

> "The Court granted the petition for Writ of Certiorari to the Supreme Court of Iowa, *limited to the following questions*:
>
> 1. Was the defendant denied due process of law by the admission into evidence at his trial of a confession which was taken from him while in custody, but before arraignment, *and without consultation with an attorney which he steadfastly refused to call?*"

2. "Where a defendant refuses to avail himself of the services of an attorney when offered him on numerous occasions while in custody, can such lack of assistance then be held to be a denial of his rights under the Sixth Amendment to the Federal Constitution?"

The record does not reveal any such statement of controverted facts or "limitation" by this Court. The order of this Court granting certiorari was:

> "On consideration of the motion for leave to proceed herein in forma pauperis and of the Petition for Writ of Certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for Writ of Certiorari be, and the same is hereby, granted." (R. 152)

However, with only a mention of Respondent's misconception of the order of the Court granting the writ, Petitioner now proceeds to reply to the substance of Respondent's Brief.

ARGUMENT

Division I

There is nothing new in the basic concept of due process. It is as old as Magna Charta and was reiterated by Sir Edward Coke in 1747 (Institutes of the Laws of England. Vol. 1, 2nd part, p. 45)

> "No man shall be desseised * * * unless it be * * * by the due course and process of law."

This right to due process was not only embodied in the 14th Amendment, but state acts in deprivation of rights guaranteed by it were strictly prohibited:

"* * * nor shall any state deprive any person of life, liberty, or property without due process of law."

Respondent leans heavily on the case of *United States* v. *Mitchell*, 322 U.S. 65; 88 L.Ed. 1140; 64 S.Ct. 986, and claims that therein:

> "This Court established clearly that in reviewing such questions, its power over state courts was narrower than that which it exercises over the lower federal courts."

Since petition invokes the protection of this Court solely under the 14th Amendment, which applies only to state courts, and not under the 5th Amendment, which applies to Federal Courts, the comparison made by the Respondent is not pertinent to the issues presented by the case at bar.

In the *Mitchell* case, this Court was dealing with the admissibility of evidence in a criminal trial in a federal court, and as to state courts, observed:

> "Our sole authority is to ascertain whether that which a state court has permitted violates the basic safeguards of the 14th Amendment. Therefore, in cases coming from the state courts in matters of this sort, we are concerned solely with determining whether a confession is a result of torture, physical or psychological, and not the offspring of reasoned choice."

In the *Mitchell* case, this Court also said:

> "Inexcusable detention for the purpose of illegally extracting evidence from an accused and the successful extraction of such inculpatory statements by continuous questioning for many hours under psychological pressure were decisive factors in the McNabb case, which led us to rule that a conviction on such evidence could not stand."

The power to preserve the rights of all persons under the 14th Amendment from state action, even though legal under state laws and decisions, is an absolute right of the Court and is neither narrowed nor broadened by the *Mitchell* case nor any other case. Otherwise, due process would be a fleeting, transitory thing, varying with state lines. With the passage of the 14th Amendment, the states were put upon notice that no matter what laws they make and no matter what interpretations may be placed upon them by state courts, the law of the land "fastens itself as an invisible vice so that the fundamental principles of liberty and justice shall be maintained." This Court has spelled out the substantive and procedural rights of persons accused of crimes through pre-arraignment, prosecution, and post trial proceedings and it tests, under the 14th Amendment, the facts of each case. It does not use as criteria the statutes or court decisions of a state.

As was said by the United States Court of Appeals (8th Circuit) recently (not yet reported) in affirming the United States District Court which granted the Writ of Habeas Corpus under the 14th Amendment in *Grandsinger* v. *Bovey*, 123 Fed. Supp, 201,

> "the defendant stands as a firebrand, plucked from the burning by the 14th Amendment."

While the laws and court decisions of a state are entitled to respect and the presumption of validity in this Court, they must stand the acid test of the 14th Amendment. The *Mitchell* case, in no sense, narrows this fundamental postulate.

Nothing new is established by the *Mitchell* case, as is contended by the Respondent. Due process has been recognized from time immemorial and the 14th Amendment specifically denounces a denial of due process by a state.

The power of this Court to review state court decisions, which might be correct under state law, and put its own independent interpretation on whether what the state had permitted to be done violated the 14th Amendment was asserted as early as 1886 in the case of *Yick Wo* v. *Hopkins*, Sheriff, 118 U.S. 356. Yick Wo was imprisoned for violation of an ordinance passed by the Board of Supervisors of the City and County of San Francisco, and released by this Court on Habeas Corpus. This Court in its opinion announced its right to "put our own independent interpretation on the ordinances" the interpretation of the California Supreme Court to the contrary notwithstanding.

More recent cases uphold this right with perfect unanimity. In the case of *Herbert* v. *Louisiana*, 372 U.S. 312, this Court held:

> "The due process clause of the 14th Amendment does not take up the statutes of the several states and make them the test of what it requires; nor does it enable us to revise the decisions of state courts on questions of state law. What it does require is that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice, which lie at the base of our civil political institutions and not infrequently designated as 'the law of the land'. These principles are applicable to all the states and do not depend upon or vary with local legislation."

In the case of *Palho* v. *Connecticut*, 302 U.S. 319, this Court analyzed those personal rights

> "which are implicit in the concept of ordered liberty, and thus, through the 14th Amendment, became valid against the states."

In a later case, *Malinski* v. *New York*, 324 U.S. 401, 416, 417, this Court, in its opinion, said:

> "Judicial review of that guarantee of the 14th Amendment inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous crimes."

So, it appears, that the claim of the Respondent that the *Mitchell* case "established clearly" that the power of this Court to review state court action is a "narrow" power is of no validity, since its power under the 14th Amendment is absolute and can be neither narrowed nor broadened.

In its opinion the Iowa Supreme Court refers to its obligation to protect the accused against deprivation of due process of law, sharply criticizes the period of detention as "much too long" and not approved by it; but holds that it is "an indicia of violation of constitutional rights, but not conclusive proof." (R. 144)

Decisions of various state courts are not necessarily final as to what constitutes due process. Otherwise, what is declared due process under the laws and decisions of one state might not be due process in another. To prevent this situation, the 14th Amendment was adopted. As was said in *Malinski* v. *New York, supra*, it "inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings * * *."

The recent case of *Mallory* v. *United States*, 77 S.Ct. 1356, this Court announces a principle opposed to the Iowa Supreme Court's interpretation that the holding of a suspect for questioning the length of time petitioner was held does not violate his constitutional rights. Petitioner inter-

prets the *Mallory* decision as not based solely on a violation by police of Rule 5(a) U.S.C. Title 18, but based, also, on a deprivation of due process of law. The following excerpts from the *Mallory* case lend weight to petitioner's view:

> "Police detention of defendants beyond the time when a commiting magistrate was readily accessible constituted 'wilful disobedience of law'."
>
> "The delay between the arrest and the arraignment must not be of such a nature *to give opportunity* for the extraction of a confession." Delay which even creates the opportunity to extract a confession, irrespective of the actual extraction of it, is thus denounced.

Whether the *Mallory* case is a controlling precedent in the case at bar and reaches out to all jurisdictions, or whether it protects only the rights of accused persons in the District of Columbia, the least that can be said of it is that it is of great persuasive authority and is entitled to consideration by this Court in the case at bar. It does not seem logical that this petitioner, because he was tried in Iowa, is less entitled to due process of law than he would be entitled to if tried in the courts of the District of Columbia. The above quoted excerpts from the *Mallory* case denounce a denial of due process and would have required a reversal of the case even if there had been no Federal Rule 5(a).

Petitioner concedes that, ordinarily, the decisions of state courts and their interpretation of state laws are entitled to credence and great respect. However, as was said in *Gallegos* v. *Nebraska*, 342 U.S. 55, this Court makes its own decision where "constitutional standards of judgment have been disregarded."

The Confession

The circumstances under which the confession was taken are detailed in petitioner's testimony, as set out in Respondent's Brief (pp. 6, 7) reveal a flagrant denial of due process. This testimony is uncontradicted in the record. Respondent contends that this testimony, though uncontradicted, is not, necessarily, entitled to credence. Just why Dr. Azordegan and Dr. Sainz left the hospital soon after this tape recorded confession was taken without the knowledge or consent of Dr. Brinegar, the superintendent, and were not produced as witnesses was not explained, except by hearsay testimony. Defendant was asked if he "had been advised" that Dr. Azordegan was overseas. Detective Dennison testified that he "understood" that Dr. Azordegan was "overseas". There was no testimony from the superintendent of the state mental hospital as to why both of these doctors left the hospital so soon after this confession was taken. In an attempt to explain, by hearsay, why Dr. Azordegan was not produced as a witness, the following record was made:

> "Q. Mr. Triplett, you have been advised that Dr. Azordegan is overseas, haven't you?
>
> A. I wasn't until a minute ago. I heard it: I wasn't advised.". (R. 9, 10)

In the face of this record, the Respondent on page 6 of its brief states incorrectly that petitioner testified:

> "That he knew that Dr. Azordegan was out of the country, could not testify to the contrary."

Division II

Did Petitioner Waive His Right to Counsel?

Respondent contends that petitioner waived his right to counsel in the pre-arraignment stages of his prosecution. (Brief p. 8)

Supporting its Division II, the Respondent in its opening paragraph states:

> "Of course, the State first relies upon the devastating testimony of attorney Corbett, then President of the Sioux City Bar Association, who (prior to the confession) offered to furnish defendant with counsel, which he steadfastly refused."

The Petitioner, being somewhat less sensitive than the Respondent to the impact of Mr. Corbett's testimony on the issue involved, fails to appreciate the "devastation" wrought by it. In view of the fact that this offer was made on October 1st, after petitioner had been in illegal custody 29 days, threatened with mob violence (R. 74) and, immediately after the offer, taken under commitment to the Mental Health Institute on October 5, where his confession was secured by psychiatrist Azordegan on October 6th, there seems to be little that is devastating in the testimony of Mr. Corbett.

What was said to him by Stanley Corbett and police officers and what he said to them concerning counsel could not constitute a legal waiver to the assistance of Counsel under the 6th Amendment to the Constitution of the United States. It was his right to be taken before a magistrate, where his right to counsel without expense to him would be officially explained and his right to retain counsel of his own choice. It was the duty of the officers to provide him

this opportunity "without unnecessary delay" instead of holding him, as they did, until their purpose to extract a confession was realized and then producing him before a magistrate. Respondent argues that the petitioner does not object to lack of assistance of counsel after arraignment. However, on arraignment, counsel is faced with a confession wrung from the unwilling lips of the accused under circumstances which would not be permitted in any court of law. (Strong presumption against waiver)

Conclusion

The actions of the police officers under color of law in the case at bar transcend all bounds of fairness and decency and any possible concept of due process. As this Court said in *Board of Education* v. *Barnette*, 319 U.S. 624, 638

> "There are village tyrants, as well as village Hampdens, but none who acts under color of law is beyond the reach of the Constitution."

The apparently reluctant affirmance of their acts by the Supreme Court of Iowa, with the stern rebuke that petitioner "was held much too long" and "Such a practice cannot be approved," cannot place the acts of the officers "beyond the reach of the constitution". Regardless of what reasons may now be given to excuse the illegal detention, it was for the purpose of securing a confession prior to arraignment, as Chief of Detectives, William Dennison testified:

> "Because I still thought he was guilty." (R. 28)

For the reasons herein presented, your petitioner invokes the power of this Honorable Court to protect those fundamental rights guaranteed to him by the Constitution of the United States.

Respectfully submitted,

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vs.

STATE OF IOWA,
Respondent

On Writ of Certiorari to the
Supreme Court of the State of Iowa

RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

OPINION BELOW

The opinion of the Supreme Court of the State of Iowa is reported in 79 N. W. 2d 391.

QUESTIONS PRESENTED FOR REVIEW

This court granted the Petition for Writ of Certiorari to the Supreme Court of the State of Iowa, limited to the following questions:

1. Was the defendant denied due process of law by the admission into evidence at his trial of a confession which was taken from him while in custody but before arraignment and without consultation with an attorney which he steadfastly refused to call?

2. Where a defendant refuses to avail himself of the services of an attorney when offered him on numerous occasions while in custody, can such lack of legal assistance then be held to be a denial of his rights under the sixth amendment to the Federal Constitution?

STATEMENT OF THE CASE

A. IN GENERAL

Testimony of the trial of the defendant herein reveals that he had been working in Sioux City for a few weeks when eight-year-old Jimmy Bremmers disappeared from his home (in Sioux City) about 8:00 p.m. on August 31, 1954. Defendant was employed as a door-to-door salesman or solicitor of business by a music store, his primary duties being to interest parents in music lessons for their children. He had been working in the neighborhood where Jimmy Bremmers resided with his parents on August 31st.

When the disappearance of the Bremmers boy had become generally known, and a considerable search instituted, the Police Department of Sioux City received word that a salesman for the defendant's employer had been soliciting business in the Bremmers' neighborhood on August 31. Officers thereupon called on the employer, learned that the defendant was the employee who had been in that part of the city, and took him to the police station for questioning on September 2.

On September 15 he volunteered to go, and was taken to the Cherokee Mental Health Institute (R. 109). Testimony of police officers is that he said he thought they might be able to aid him there by treating him for syphilis. There is also testimony that on three or four occasions he said he did not want a lawyer; that he wanted to help solve the boy's disappearance. There is testimony also that on September 4, when all that was known of the matter was that the boy was missing, that defendant said he was interested in cooperating in every way in clearing up "this murder"; and when asked why he referred to it as a "murder" he made no reply.

Quoting from the Iowa Court's Opinion (79 N. W. 2d at 394), we find:

"While the defendant was at the Cherokee hospital the body of Jimmy Bremmers was found. Thereupon he was taken from the hospital by police officers and to the place

where the body was found. The roadway here is considerably below the level of the field in which the body lay, a short distance from the fence. It was not visible from the road. When the car stopped, there is evidence he at once went in a diagonal direction up the bank to a point outside the fence nearest to the body, without direction from anyone. When he saw the body he turned pale and said 'What is that?'

"After viewing the body the defendant was taken to the Sioux City police station and kept there for a few days. On October 1 he was visited at the jail by Stanley Corbett, president of the Sioux City Bar Association. Mr. Corbett advised him that *if he was being held against his will* he was entitled to seek a writ of habeas corpus and the bar association would furnish him counsel. Mr. Corbett testified: '*He said he was not held against his will* and he wanted to help the police solve the murder. I told him the bar association would furnish him counsel but he said he did not want to leave the jail or the hospital, whichever place he might be.' On cross-examination the witness said that the defendant gave two reasons for staying there: he had no other place to go and he wanted to stay there and work for the police chief in attempting to solve 'this murder'.

"The defendant was then returned to the Cherokee institution, where on October 6th he confessed to the commission of the crime. The confession was obtained by Dr. Azordegan, one of the hospital physicians. Most of the material questioning was done by Dr. Azordegan, in the presence of police officers and of one Bill Sanguin, a hospital attendant who operated a tape recording device. This recording was upon the trial played to the jury."

B. TESTIMONY CONCERNING THE PERIOD OF CUSTODY FROM ARREST TO ARRAIGNMENT

1. STATES EVIDENCE;

LIEUTENANT OF DETECTIVES WILLIAM A. DENNISON testified: That he was present at the time the tape recording was made in Cherokee at the Mental Health In-

stitute; that during the time Mr. Triplett was in custody he slept regularly and was not interviewed for any sustained period of time; that Mr. Triplett was of normal mentality and could not be led, (R, 7, R, 98); that he said; "I want to go along with you boys, I want to cooperate with you"; that he did not threaten or entice the defendant to tell him what he knew but rather that he asked him to go over the activities of the night the boy was missing; that Triplett volunteered to go to the Mental Health Institute at Cherokee, Iowa, for observation and treatment of syphilis (R, 97); that on three or four occasions he asked Triplett if he wanted a lawyer and the defendant said he did not want any lawyer (R, 97); that there was never any physical force used on Mr. Triplett and at the time the tape recording was taken at Cherokee there were never any promises or threats made to him in his presence; that he did not expect a confession the day he went down to the Mental Health Institute; that the defendant admitted the actual killing of the boy at the Cherokee Mental Health Institute; that he took a statement from him (the defendant) to the effect that "I don't want a lawyer to represent me while you are holding me here in custody without any charge. I just want to sit here or stand here. I like it here." (R, 25, 110); that without threat, promise or inducement he asked to be put under observation and receive treatment at the Mental Health Institute where he went on September 15 (R, 109); that the questioning sessions of the defendant during the time he was held in custody never lasted more than three hours between eight in the morning and five o'clock in the afternoon and rarely was it ever over more than one hour (R, 109, 110); that during the afternoon of the conference he did not hear any threats or promises being made to Mr. Triplett by the attending physician and that the statements made by the defendant were made voluntarily at about one o'clock in the afternoon of October 6, 1954 at the Mental Health Institute (R, 27, 111).

Dennison also testified at length about the details of the period during which the confession was going on (R, 26-30, 111-112, see also R, pp. 35, 36, 114, 32, 33, 54, 55, 121, 122).

CHIEF OF DETECTIVES HARRY J. GIBBONS testified: That he was present in Cherokee at the time of the Triplett confession (R, 13) and that he himself asked Triplett the question as to whether his statement was free and voluntary and that Triplett agreed that it was; that Triplett voluntarily committed himself for treatment at the Mental Health Institute (R, 22, 106); that he heard no threats or promises made to Triplett on the date of the confession and that he knew of his own knowledge that it was given of his own accord; that Dr. Azordegan stated that Triplett wanted to talk to the officers and tell them the truth about the Bremmers boy (R, 30, 31).

The then SIOUX CITY BAR ASSOCIATION PRESIDENT, STANLEY M. CORBETT, testified that he informed Mr. Triplett that if he was being held against his will he was entitled to seek a writ of habeas corpus, that he would get the assistance of an attorney for him, but that Triplett insisted he did not want to leave the jail or the hospital, whichever place he might be, stating that he had no other place to go and that he wanted to stay there and work for Mr. Gibbons in attempting to solve this murder; that he had not been mistreated at any time either in the jail in Sioux City or in the hospital at Cherokee, that he expected to go back to Cherokee for further treatment and then come back to help the police at Sioux City in connection with the case (R, 14, 100-101).

CHIEF OF SIOUX CITY POLICE, RUSSELL H. WHITE, testified that he had interviewed Mr. Triplett on a number of occasions, that Mr. Triplett was normal with respect to mentality and alertness and "probably as hard a person to interrogate as I have ever encountered. He is very alert. I don't think anybody during my time of being with him and listening to him ever was ahead of Ernie Triplett on interrogation." (R, 15, 16); that he never made any promises or threats to the defendant and that no one else did in his presence (R, 18); that Triplett was of average intelligence, exceedingly alert and his mind was not easily led or swayed (R, 104).

MENTAL HEALTH INSTITUTE EMPLOYEE BILL SANGUIN testified: That he was employed at the Mental Health Institute during the month of October, 1954, and was present at the interview of Mr. Triplett on October [illegible]; that he made the recording and that the recording instrument was in plain sight of Mr. Triplett and that the tape was an accurate recording of all that took place at the interview (R, 56, 119, 120).

CAPTAIN OF SIOUX CITY POLICE JOSEPH DAVIDCHIK testified that he had a conversation with Triplett on September 4 and that Triplett was not questioned on that occasion or any other after the hour of ten o'clock p.m. and that no one ever questioned him as early as two a.m. in the morning and that nobody interviewed him before seven a.m. the days he was on duty. (R, 17, 102, 103).

DEFENDANT ERNEST J. TRIPLETT testified that Dr. Azordegan interviewed him prior to the officer from Sioux City arriving to take the tape recording and that in that interview the doctor promised him that he was in the Mental Health Institute indefinitely but that if he signed a confession in a year or two he could let him out. That he knew that Dr. Azordegan was out of the country, could not testify to the contrary, that he did not remember Dr. Azordegan asking him questions to the effect that his testimony to them was voluntary and that he did not think he could recall saying it even if he heard the recording. (R, 9, 10, 99).

2. DEFENDANT'S TESTIMONY.

PRIVATE DETECTIVE JOSEPH MATOUSEC testified that the Sioux City police allowed him to interview Triplett for the better part of two hours in early September at which time he was not employed by anyone; that he was now in the employ of Mr. Tacy in behalf of Mr. Triplett; that he attempted to induce Triplett to give him details of the crime by promises of treatment at the Mental Hospital and securing him a lawyer; that the Bar Association did appoint one for him about a week later (R, 10-13, 100).

DEFENDANT ERNEST TRIPLETT testified that he was grilled every day for two days straight (R, 64); that

Matousec interviewed him and promised an attorney and treatment at the Cherokee hospital if he would confess the crime; that he was interviewed quite a few times while held in custody (R, 65) and that some of the questioning took place in the nighttime from 2:30 in the morning on and that he was roused from his bed for these interviews (R, 55, 56); that he was given coffee, and interviewed by one man who was so big he was afraid of him, who told him that he would beat him up if he didn't tell the truth, but that "the other boys were nice" to him (R, 66); that at Cherokee he was given a medicine and promised by Azordegan "I am going to help you out if you plead guilty." (R, 66, 67); that "I was taking different kinds of medicine down there. I got on quite a few drunks. I don't know the medicine but I got it. He said it would help me out and he would get me finally on a job over there and that I wouldn't be in there any more than about two years. And I thought, 'well, if he knows what he's talking about I'll let him help me out.' "; that he didn't feel natural at the time the recording was made; that he went over his story with Dr. Azordegan before the interview on tape recorder; that Azordegan told him exactly what to say and that he never changed it, but that he couldn't get Dr. Azordegan's story down very good; that he told Azordegan that he was not guilty but that he would go ahead with the story and see how it worked out, and repudiated the entire confession: "Why no, they (statements on the tape recording) are false. I mean that's all, they're just false. I never killed the kid." (R, 68); that he did not ask to be taken into a court because "I thought they would come to that, but they were definitely stuck on keeping me there, but a lack of funds, you can't very well bring it into court because there was no charges."; that he agreed with Azordegan on what he was to say on the tape recording and that the things in that tape recording admitted about unnatural sex habits "was something that the doctor and I agreed on before we went in there. I didn't even know they had a tape recording. I could beat them out easy without a tape recorder." (R, 70); that he slept on a steel mesh bed for some days before getting a mattress

in jail in Sioux City (R, 71); that though it was his signature on Exhibits Q to Q-7 "I wasn't under oath when I put my signature on there though. I can testify different than that and get by with it; just roll it around."; and on being asked to identify said exhibits answered, "I haven't got no glasses on. I deny everything on my constitutional rights, right there; everything you've got I deny; try and prove it." and again "I would like to read those over, I don't know how much you have got in there (Exhibits Q to Q-7). I claim my constitutional rights not to answer those questions." (R, 74, 125); that he remembered talking to Mr. Stanley Corbett and that he turned down Mr. Corbett's offer of legal assistance because "right then and there I was trying to prove to the detective force that I wasn't guilty and I figured they would turn me loose; but they made a steady customer out of me. He said if I wanted an attorney he would get me one but Mr. Gibbons said it would not be nice for me to get out on the street and let the public get ahold of me because he said 'what they won't do to you.' So I didn't have nowhere to go I might as well stay and fight it out with them."; that he did not request to go to the Mental Health Institute at Cherokee but that witness Gibbons forced him to make such a request and, again, with respect to Mr. Corbett's testimony:

> "Q. Would you state whether or not you told this gentleman who on October 4, ask you if you wanted an attorney, about whom you testified before,—Answer, Corbett? I don't remember telling him anything like that." (R, 75).

In answering a question that he couldn't remember much of anything he told the police in the early days of his arrest he said, "That's right. I'm denying everything I told the police. Now if you want the truth of it that's it." Question: Are you lying now or when you talked to the police? Answer: "I'm sworn in here. You ain't goin' to get me for perjury." (R, 74, 129) Again referring to the visit by the Sioux City Bar Association president, Mr. Corbett:

> "Question: And did he on that occasion tell you if you wanted one he would furnish a member of the Sioux

City Bar of your choice? Answer: I did not know anybody. How could I get a choice? Question: Did he say he would furnish you with an attorney if you wanted one? Answer: I can't look through his eyes. Question: Did he ask you that? Answer: I imagine he did. Question: What did you answer him? Answer: I told him there wasn't no charges filed against me yet so I didn't know whether I needed a lawyer; I thought I might need three if they ever got around to filing a charge.";

that he got himself into a court room anyway and that

"they didn't bury me over in Cherokee for the rest of my life. Yesterday I testified about visiting the scene with certain officers where the body of Jimmy Bremmers had been found." Question: Would you tell us what you recall seeing out there? (Defendant claims his rights under Constitution of the United States and of Iowa. Sustained.) (R, 75, 130)"

He said he had no personal grievance against the police in Sioux City (R, 130); that with respect to questioning by the Sioux City police,

"The only voluntary statement I made as to seeing Jimmy Bremmers was that I saw some children playing in the Meisch yard and I thought one of them might have been him; but I gave them a fabulous story on that—I gave them a fabulous story that other." Question: Mr. Triplett, do you have any reason why that you under serious questioning for day after day that you do wear out rather easily? Answer: Well, I wouldn't say I wore out too easily. I put a few of the big boys to sleep down there on the desk. After I got down to Cherokee, they appeared to take this tape recording. I got the same amount of sleep there. I never check my sleep or eats any. No, and it didn't bother me too much. (R, 133)

Finally, Triplett concluded saying that he couldn't state truthfully whether or not a tape recording had been made (R, 76) but that he had been there a week and a half before the tape recording was made. (R, 76)

3. THE COURT MADE THE FOLLOWING RECORD:

"The Court: Well, I think that we are all of the opinion that it has repeatedly and quite consistently held that mere exhortation to tell the truth are not a bar to a confession. Here, apparently, there have been no threats of reprisal, threats of physical harm or violence, no oppression, and the arguments in connection with this matter apparently assumed that some promise, or some reference of treatment might result if confessions were made, were in fact made. Of course, the jury is not bound to accept the testimony of any witness as absolutely true, even if the testimony is in no respect controverted; and they should not do so if, for any reason they believe the testimony is untrue or unreliable. It is the sole province of the jury to determine the weight and credibility of testimony, and, perhaps in a pre (fol. 27) liminary hearing such as this, that is the province of the court.

"I am decidedly of the opinion that there is a jury question here, and I think the motion or request to exclude the confession should be, and the same is denied and overruled, and I think the' should be admitted in evidence, and the jury under proper or what I consider to be proper instructions, be permitted to determine from the evidence whether they should give consideration to the admissions and confessions, on the finding that they were freely and voluntarily made, without any hope or promise of reward or fear of reprisal. So, they will be admitted in evidence; and the Court will endeavor to properly instruct the jury."

ARGUMENT

DIVISION I

The question of whether or not a pre-arraignment confession of guilt by one held in custody is admissible without violation of his rights under the Fourteenth Amendment to the Federal Constitution has been considered by this Court on many occasions. Simply put, the question turns on whether or not the confession was freely given.

However, first, it should be pointed out that in *U. S. v. Mitchell*, 322 U. S. 65, 88 L. Ed. 1140, 64 S. Ct. 986, this Court established clearly that in reviewing such questions its power over State courts was narrower than that which it exercises over the lower Federal courts. As to the State courts its sole authority is to determine whether the inherent safeguards of the Fourteenth Amendment to the Federal Constitution have been transgressed. See also *McNabb v. U. S.*, 318 U. S. 332, 87 L. Ed. 819, 63 S. Ct. 608, Reh. den. 319 U. S. 784, 87 L. Ed. 1727, 63 S. Ct. 1322.

In Iowa the sole test of the admissibility of a confession or an admission is whether it was made freely and voluntarily and without compulsion or inducement of any kind. *State v. Case*, 247 Iowa 1019, 75 N.W. 2d 233; *State v. Crisman*, 244 Iowa 590, 57 N.W. 2d 207. And the burden is on the accused to show that his confession or admission, whether it be oral, written or a wire or other recording and which on its face purports to be freely and voluntarily given, is incompetent as evidence and that it was involuntarily given. *State v. Crisman*, supra; *State v. Hofer*, 238 Iowa 820, 28 N.W. 2d 475.

The fact that a suspect has been held without charge or arraignment for several days, while not to be condoned, does not in itself render a confession involuntary, this being a matter of practice rather than of constitutional right. *State v. Triplett*, 248 Iowa —, 79 N.W. 2d 391; *State v. Case* supra; *State v. Williams*, 245 Iowa 494, 62 N.W. 2d 742; *State v. Archer*, 244 Iowa 1045, 58 N.W. 2d 44; *Gallegos v. Nebraska*, 342 U.S. 55, 72 S. Ct. 141, 96 L. Ed. 86.

In attempting to measure the facts for "voluntariness" this Court has established various indicators as bearing on whether or not a confession was in fact freely given. In the instant case Petitioner seems to be complaining on two such grounds. In Division I of his argument he appears to allege that the confession was induced both by intimidation and promise, coupled with a lengthy period of police custody prior to arraignment, and that this combination of circumstances made the confession obtained in the interim involuntary and thus inadmissible.

Defendant was arrested on September 2, 1954, and held for thirteen days by police without charge during which time he was questioned almost daily, although the evidence and the Trial Court (R, 16) both indicated that this was neither at great length nor without ample food and rest between interviews.

There is testimony that during this time he was asked repeatedly if he wanted counsel and he insisted that he did not and that he wanted to help solve this case.

On September 15 he was taken voluntarily to the Cherokee Mental Health Institute where he was treated for syphilis, after which he was returned to Sioux City police custody. He was then visited by Mr. Stanley M. Corbett, president of the Sioux City Bar Association, who told him several lawyers would be glad to offer their services, but he refused saying that he had no place else to go; liked the jail because he was treated well there, and wanted to help solve the murder and return to Cherokee for more treatment (R, 14, 138, 139). Thereafter, he returned to Cherokee where he made the tape recorded confession to a psychiatrist at the hospital, in the presence of a hospital attendant, who operated the recording machine, and representatives of the Sioux City Police Department, whereupon he was charged with murder.

In *Lyons v. Oklahoma*, 322 U. S. 596, 88 L. Ed. 1481, 64 S. Ct. 1208, the following language appears:

"Review here deals with circumstances which require examination into the possibility as to whether the judge and jury in the trial court could reasonably conclude that the

McAlester confession was voluntary. The fact that there is evidence which would justify a contrary conclusion is immaterial. To triers of fact is left the determination of the truth or error of the testimony of prisoner and official alike. It is beyond question that if the triers of fact accepted as true the evidence of the immediate events at McAlester, which were detailed by Warden Dunn and the other witnesses, the verdict would be that the confession was voluntary; * * *"

The Iowa Court, in its decision, 79 N.W. 2nd at 396 stated:

"* * * On the whole record we think the question of voluntariness was properly submitted to the jury, and its determination must be final."

The triers of fact found that irrespective of the defendant's contrary testimony the confession was voluntary.

The review of such finding by this court was delimited in its decision in *Stein v. New York*, 346 U. S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077, Rehearing denied 346 U. S. 842, 98 L. Ed. 362, 74 S. Ct. 13, where you appear to say that issues of fact are virtually conclusively determined in the State courts:

"When the issue has been fairly tried and reviewed, and there is no indication that constitutional standards of judgment have been disregarded, we will accord to the state's own decision great and, in the absence of impeachment by conceded facts, decisive respect. *Galiegos v. Nebraska*, 342 U.S. 55, 60, 96 L. Ed. 86, 91, 72 S. Ct. 141; *Lyons v. Oklahoma*, 322 U.S. 596, 602, 603, 88 L. Ed. 1481, 1485, 1486, 64 S. Ct. 1208; *Lysenba v. California*, 314 U.S. 219, 86 L. Ed. 166, 62 S. Ct. 280.

"Accordingly, we accept this verdict and judgment as a permissible resolution of contradictions in evidence or conflicting inferences unless, as is urged, undisputed facts indicate use of incorrect constitutional standards of judgment. This may best be determined by separate examination of the following conclusions, implicit in the judgments below: (1) that these confessions were not extorted by physical coercion; (2) that these confessions were not extorted by methods which, though short of physical coercion, were so op-

pressive as to render the confessions inadmissible; and (3) that *admitted illegal detention of petitioners at the time of the confessions did not render them inadmissible.*" (Emphasis ours.)

We turn then to the period prior to arraignment.

In *Lyseuba v. California*, 314 U.S. 219, 86 L. Ed. 166, 62 S. Ct. 280, Rehearing denied 315 U.S. 826, 86 L. Ed. 1222, 62 S. Ct. 620, the following language appears:

"Like the Supreme Court of California, we disapprove the violations of law involved in the treatment of the petitioner, and we think it right to add that where a prisoner held incommunicado is subjected to questioning by officers for long periods, and deprived of the advice of counsel, we shall scrutinize the record with care to determine whether, by the use of his confession, he is deprived of liberty or life through tyrannical or oppressive means. Officers of the law must realize that if they indulge in such practices they may, in the end, defeat rather than further the ends of justice. Their lawless practices here took them close to the line. But on the facts as we have endeavered fairly to set them forth, and in the light of the findings in the State courts, we cannot hold that the illegal conduct in which the law enforcement officers of California indulged by the prolonged questioning of the prisoner before arraignment, and in the absence of counsel, or their questioning on May 2, coerced the confessions the introduction of which is the infringement of due process of which the petitioner complains. * * *"

The Iowa Court in the instant case also pointed this out in 79 N.W. 2d at page 395:

"* * * Of course the length of time he was held in custody without being taken before a magistrate to answer to a charge duly filed was much too long. Such a practice cannot be approved. But we have held that this, in itself, does not render a confession involuntary. It is an indicia of violation of constitutional rights but not conclusive proof. * * * Under the circumstances here, where there is substantial evidence that the defendant preferred to stay in the jail or the mental hospital, and refused an offer of legal aid when it was tendered to him several days before the con-

fession was made, we cannot say the detention without charge did more than make a question of lack of due process through involuntariness of the confession, for the jury."

In *Gallegos v. Nebraska*, 342 U.S. 55, 96 L. Ed. 86, 72 S. Ct. 141, where an illiterate farmhand was held fifteen days without counsel, or preliminary appearance before a magistrate, it was held that while such prolonged detention should be considered in determining the admissibility of a confession obtained during that period, that under the facts there was no abuse of due process.

This was no illiterate Mexican farmhand, but one who had engaged in business dealings and whose very testimony gave evidence of his articulate alertness, and who is confronted by the overwhelming testimony of a disinterested bar association president who undisputedly offered the services of several attorneys and who attests to defendant's refusal thereof, *prior* to the confession defendant seeks to have barred.

In a habeas corpus action, *Brown v. Allen*, 344 U. S. 443, 97 L. Ed. 469, 73 S. Ct. 397, this Court held that the confession obtained from an illiterate while held in custody eighteen days without benefit of counsel before arraignment was properly admitted in State court where there was no showing of physical coercion and he was not denied the right of counsel.

In the instant case defendant was not only not denied the right of counsel but asked on numerous occasions throughout his detention if he wanted an attorney which he repeatedly refused.

As was pointed out in *Lyons v. Oklahoma*, cited supra, fn. 2, L. Ed., "In petitioner's brief a claim is made that Oklahoma denied to him the equal protection of the laws guaranteed by the Fourteenth Amendment. Apparently petitioner relies upon his undue detention without preliminary examination, which was in violation of the state criminal procedure as a denial by Oklahoma of equal protection of the law.

"But the effect of the mere denial of a prompt examining trial is a matter of state, not of federal, law. To

refuse this is not a denial of equal protection under the Fourteenth Amendment although it is a fact for consideration on an allegation that a confession used at the trial was coerced. * * *"

DIVISION II

Petitioner also contends that his right to counsel under the Sixth Amendment was abused for lack of counsel prior to arraignment.

Of course, the State first relies upon the devastating testimony of attorney Corbett, then president of the Sioux City Bar Association, who (prior to the confession) offered to furnish defendant with counsel which he steadfastly refused (R, 14, 100, 138, 139) as he had done previously with officer Dennison (R, 25, 97).

Petitioner gives as his reason for not wanting counsel that he was afraid of mob violence. It hardly follows that engaging an attorney would bring mob action down upon the defendant. Even if getting an attorney could be considered tantamount to his release from custody, which presumably would be the only time he might have to fear violence, certainly he could have an attorney without exercising his possible right to any action for temporary release from custody.

The Supreme Court of Iowa adequately answered the contention that the threat of mob violence went unchallenged in the record in answering a similar challenge as to absence of contradictory evidence by the State when it said, "But the jury was not bound to take defendant's testimony as true, even in the absence of contradiction. We have repeatedly so held. * * *" 79 N.W. 2d at 395.

In the case of *Powell v. Alabama*, 287 U.S. 45, 77 L. Ed. 158, 53 S. Ct. 55, this court proclaimed again the right of a defendant to counsel at every stage of the proceedings. But it is pointed out therein that the critical period of the proceedings is from arraignment to trial. (See also *Avery v. Alabama*, 308 U.S. 444 at 450, 84 L. Ed 377, 60 S. Ct. 321. To the same effect.)

Defendant here makes no assertion of lack of counsel at

or after arraignment. The State feels in view of the Dennison and Corbett testimony indicating almost conclusive proof of continued resistance to offers of legal assistance, that the defendant clearly waived his undoubted right to confer with counsel during the period in question.

The question doesn't differ greatly in substance from the recent case of *U. S. v. Bando*, 244 F.2d 833, where one of the defendants prior to arraignment who had been told he could have a lawyer, went ahead and made a confession. The U. S. Court of Appeals, Second Circuit, held that since the confession had been freely given no constitutional rights were violated. It has even been held that where a defendant pleaded on arraignment without counsel having been appointed no abridgment of defendant's rights under the Sixth Amendment occurred. Council v. Clemmer, 177 F. 2d 22, 85 U.S. App. D. C. 74, Cert. den. 70 S. Ct. 150, 338 U.S. 88, 94 L. Ed. 540.

As we understand the test of whether a conviction is vitiated by defendant's being without the services of counsel in the pre-arraignment period, a showing would have to be made that this lack of counsel caused events which so infected the trial that Petitioner was prejudiced thereby. *Stroble v. California*, 343 U.S. 181, 96 L. Ed. 872, 72 S. Ct. 599.

There are no such facts here. Defendant repeatedly refused counsel during the period in question and, only after such refusals, then made the confession which assisted in his conviction. In view of his waiver of counsel and his subsequent admission of guilt we think he cannot now be heard to complain that he was deprived of his rights under the Sixth Amendment.

CONCLUSION

1.

While the admission of a confession obtained during a lengthy period of detention from a defendant without counsel, and who has not been arraigned, raises a question of

abuse of the petitioner's rights under the Fourteenth Amendment, when not accompanied by other facts showing the same to have been involuntarily given, this Court under its previous holdings should accept the determination of the triers of fact as to its voluntariness.

2.

The defendant is entitled to the assistance of zealous and earnest counsel from arraignment to final argument but absence of counsel prior to the arraignment denies Federal Constitutional protection only when the absence results in a denial to the accused of the essentials of justice: Where, as here, during the period of detention the defendant continually refuses assistance of counsel and only after such refusal makes a confession of guilt, there can be no denial to the accused of such essentials of justice.

Respectfully submitted,

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APPEARANCE

I, Freeman H. Forrest, a member of the Bar of the Supreme Court of the United States, do hereby enter my appearance as counsel for the State of Iowa, Respondent.

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